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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AWP–2]

Establishment of Class D Surface Area at Indian Springs Air Force Auxiliary Field; Indian Springs, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes a Class D Surface Area at Indian Springs Air Force Auxiliary Field (INS) located in Indian Springs, NV. A review of airspace classification in the vicinity of the INS airport has resulted in a determination that this action is necessary to enhance aviation safety and support military operational requirements.

EFFECTIVE DATE: 0901 UTC March 21, 2002. Comment date: Comments for inclusion in the Rules Docket must be received on or before March 29, 2002.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 02–AWP–2, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: This action establishes a Class D airspace at Indian Springs Air Force Auxiliary Field, NV. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace established in this document will be published subsequently in that Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 02–AWP–2." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted therein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000. Class D Airspace.

* * * * *

AWP NV D Indian Springs, NV [New]

Indian Springs Air Force Auxiliary Field, NV
(Lat. 36°35'14" N, long. 115°40'24" W)

That airspace extending upward from the surface to and including 5,700 feet MSL within a 5-mile radius of Indian Springs Air Force Auxiliary Field, excluding Restricted Area R–4806W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 30, 2002.

Steve Lloyd,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–4626 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Chlorhexidine Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for topical use of chlorhexidine ointment for surface wounds on dogs, cats, and horses.

DATES: This rule is effective February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–301 for PRIVASAN (chlorhexidine acetate) Antiseptic Ointment. The application provides for topical use of a 1-percent chlorhexidine acetate ointment for surface wounds on dogs, cats, and horses. First Priority's PRIVASAN Antiseptic Ointment is approved as a generic copy of Ft. Dodge Animal Health's NOLVASAN Antiseptic Ointment, approved under NADA 9–872. ANADA 200-301 is approved as of November 6, 2001, and 21 CFR 524.402 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

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

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 524.402 is revised to read as follows:

§ 524.402 Chlorhexidine ointment.

(a) *Specifications.* The product contains 1-percent chlorhexidine acetate in an ointment base.

(b) *Sponsor.* See Nos. 000856 and 058829 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Indications for use.* Use as a topical antiseptic ointment for surface wounds on dogs, cats, and horses.

(2) *Limitations.* Not for use in horses intended for food.

Dated: January 30, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–4595 Filed 2–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 194

[Public Notice 3879]

Inter-American Convention on International Commercial Arbitration Rules of Procedure

ACTION: Final rule.

SUMMARY: The Department of State has determined that the amended Rules of Procedure of the Inter-American Commercial Arbitration Commission ("IACAC") should become effective in the United States pursuant to Chapter III of the Federal Arbitration Act. The amended Rules clarify and enhance the role of IACAC in the initiation and conduct of arbitration of international commercial disputes to which the International Convention on

Commercial Arbitration ("Convention") applies. The amended Rules address such issues as notice procedures, the appointment of arbitrators, and the role of each National Section of IACAC. These Rules will come into force on April 1, 2002, for all states party to the convention.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Kovar, Assistant Legal Adviser for Private International Law, 2430 E St., NW., South Bldg., Suite 357, Washington DC 20037–2851; email: *kovarj@ms.state.gov;* tel: 202–776–8420.

SUPPLEMENTARY INFORMATION:

Regulatory History

IACAC has amended its Rules of Procedure applicable to the conduct of international commercial arbitration under the Convention. The amended Rules of Procedure will enter into force on April 1, 2002, for all states party to the Convention. The Convention entered into force for the United States in 1990 with the reservation that the United States is only bound by the Rules of Procedure in effect on July 1, 1988, unless the Secretary of State determines by regulation that any subsequent modification or amendment will apply in the United States. Pursuant to section 306 of the Federal Arbitration Act, 9 U.S.C. Sec. 306, the rulemaking procedures of Title 5 section 553 of the United States Code apply to any determination to effectuate such a modification or amendment within the United States.

On February 19, 1999, the Department received a copy of the amended IACAC Rules of Procedure from the U.S. National Section of IACAC, the American Arbitration Association in New York. After clarifying some typographical and translation errors with IACAC, the Department published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53632, Oct. 4, 1999), and requested public comments by November 18, 1999, on the text of the amendments. A small number of requests were received for copies of the amended Rules of Procedure and comments received. The comments were reviewed, discussed with the individuals submitting them, and provided to the American Arbitration Association with a request that IACAC consider making modifications to its amendments.

On May 31, 2000, the Department was notified by the American Arbitration Association that IACAC had made minor changes to the amendments primarily related to ensuring the text is consistent with the Rules of Arbitration published by the United Nations Commission on International Trade Law ("UNCITRAL"), and that the English and Spanish language versions are in conformity. The revised amendments were formally adopted by IACAC on July 1, 2000. The amendments will uniformly enter into force for all states party to the Convention on April 1, 2002, and are incorporated in the text of the final rule published today.

IACAC Internal Administrative Procedures

In addition to the Rules of Procedure published here governing the conduct of arbitration under the Convention, IACAC has amended its internal procedures for cases administered under its Rules. These internal procedures, which largely cover fees and internal practices related to the appointment of arbitrators, will not be published in the Code of Federal Regulations. Interested persons should contact the American Arbitration Association, the U.S. National Section of IACAC, at 335 Madison Ave. New York, NY 10017, with any queries about these internal procedures. The text of the internal procedures follows:

IACAC'S Internal Administrative Procedures for Cases Administered Under Its Rules

The following procedures shall govern in those instances when an Arbitral Tribunal is constituted under the Rules of Procedure of the IACAC:

1. Lists of Arbitrators

1.1 In order to faithfully and efficiently designate arbitrators, a list of candidates will be compiled and kept up to date by the Office of the Director General of the IACAC.

1.2 At least every (2) years a detailed revision of the lists will be undertaken in order to guarantee that its members are individuals who possess the necessary knowledge and experience to fulfill their functions satisfactorily.

1.3 To configure the list, each National Section will send to the Director General of the IACAC a number of candidates to be included, in a number no larger than (10). Each of the names will be accompanied by his/her respective detailed "curriculum vitae" and a complete description of his/her specific professional experience, as well as that which corresponds to the specific position for which the name is submitted. The Director General will conduct the verification and analysis of the requests. The report by the Director General will be presented to the Executive Committee, which will compose the lists. classifying its members by specialties.

2. Appointment of Arbitrators

2.1 The appointment of arbitrators, that according to the rules of procedure should be made by the IACAC, will be conducted by the Arbitrator Nominating Committee, which will be permanent in nature and will be composed of the President, the Director General and (2) members of the Executive Committee, which the executive Committee will designate to that effect. If possible, said Committee will reach its decisions during a special meeting, or if a meeting were not possible, via telephone, telex, fax, or any other medium that allows the formation of the Committee's decision.

2.2 Minutes of the designation will be taken by the Director, who will serve as the Committee's Secretary.

3. Responsibilities of the Arbitrators

In the fulfillment of their position, Arbitrators designated by the IACAC as well as those designated by the parties who have agreed to submit themselves to the Rules of Procedure of the IACAC, are obligated to respect and follow, in the exercise of their position (as arbitrators), not only the referred rules and these rules, but to follow strictly the fee schedules established by the Commission.

4. Challenge of Arbitrators

Whenever the IACAC is required to make a decision regarding the withdrawal of an arbitrator said decision shall be made by the Arbitrator Nominating Committee referred to above by item 2.

5. Secretarial Services

Absent an agreement by the parties to the contrary, the Secretarial functions of the Tribunal will be conducted by the corresponding National Section at the seat of the Tribunal. It will be the National Section's responsibility to provide all the technical and logistical support required to fulfill its responsibilities. Among the costs and expenses of the Tribunal, remuneration of the corresponding secretarial services will be included in conformity with the applicable IACAC fee schedule in place at the time of the filing of the arbitration. In the event that there is no National Section of the IACAC and the parties had not agreed to anything on this regard, secretarial services will be provided according to whatever the Arbitral Tribunal decides.

6. Schedule of Fees

6.1 Filing Fees

A non-refundable filing fee in the amount of US$1,000 shall be paid at the filing of an arbitration; claimant must attach it to its request for arbitration referred to in Article 3 of these Rules. Said amount may be modified periodically by the IACAC.

6.2 Administrative Fees of the IACAC

The administrative fee shall be calculated by applying the indicated percentages to the successive parts of the amounts in controversy, and adding the amounts calculated in that way.

Amount of claim (in US$)	Administrative fee (in US$)
Up to $50,000	$2,000
From 50,001 to 100,000	3.00%
From 100,001 to 500,000	1.50%
From 500,001 to 1,000,000	1.00%
From 1,000,001 to 2,000,000	0.50%

Amount of claim (in US$)	Administrative fee (in US$)
From 2,000,001 to 5,000,000	0.20%
From 5,000,001 to 10,000,000	0.10%
From 10,000,001 to 80,000,000	0.05%
Over 80,000,000	$65,500.00

6.3 Arbitrator Fees

Arbitrator fees for each arbitrator will be calculated by applying the indicated percentages to the successive parts of the amounts in controversy, and adding the amounts calculated in that way.

Amount in controversy (in US$)	Fees (in US$)	
	Minimum	Maximum
Up to $50,000	2,000	15%
From 50,001 to 100,000	1.50%	10%
From 100,001 to 500,000	0.80%	5%
From 500,001 to 1,000,000	0.50%	3%
From 1,000,001 to 2,000,000	0.30%	2.50%
From 2,000,001 to 5,000,000	0.20%	0.80%
From 5,000,001 to 10,000,000	0.10%	0.50%
From 10,000,001 to 50,000,000	0.05%	0.15%
From 50,000,001 to 100,000,000	0.02%	0.10%
Over 100,000,000	0.01%	0.05%

6.4 Fees for Other Services

6.4.1 Postponement or Cancellation Fees

In the event that a hearing scheduled to take place before a single arbitrator Tribunal has to be postponed or cancelled for reasons attributable to one of the parties, a charge of US$150 will be assessed to that party causing the postponement or cancellation. The charge will be US$250 if the hearing was to take place before a Tribunal of three arbitrators.

6.4.2 Suspension for Nonpayment

If compensation due to the arbitrators or administrative fees have not been completely paid, the Tribunal or its Secretariat, in its place, will inform the parties of said circumstances so that the fees may be paid in full either by both parties or one of them. Once requested, if payment is not received, the Tribunal may order the suspension or termination of the arbitration at its discretion. If the arbitrators have not been designated, the IACAC may suspend the arbitration.

6.4.3 Rental of Facilities

The rental of hearing rooms will be available to the parties in the respective National Sections for a fee and subject to availability.

[End of IACAC Internal Administrative Procedures]

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule after it was published as a proposed rule on October 4, 1999 (see Supplementary Information).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

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

List of Subjects in 22 CFR Part 194

Administrative practice and procedure, Foreign relations, Treaties.

For the reasons set out in the preamble, 22 CFR chapter I is amended by adding subchapter U consisting of part 194 to read as follows:

SUBCHAPTER U—INTERNATIONAL COMMERCIAL ARBITRATION

PART 194—INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION RULES OF PROCEDURE

Sec.

Authority: 9 U.S.C. 306.

§ 194.1 Authority and scope of application.

In accordance with the authority in chapter III of the Federal Arbitration Act (9 U.S.C. 306), the Department of State has determined that the amended Rules of Procedures of the Inter-American Commercial Arbitration Commission (IACAC) should become effective in the United States and will come into force on April 1, 2002, at the same time as for all states party to the Inter-American Convention on International Commercial Arbitration. The IACAC's amended Rules of Procedure set forth the procedures for the initiation and conduct of arbitration of certain international commercial disputes to which the Inter-American Convention on International Commercial Arbitration applies. The amended Rules of Procedure are set out in full in appendix A to this part.

Appendix A to Part 194—Inter-American Commercial Arbitration Commission Rules of Procedure (As Amended April 1, 2002)

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Rules of Procedure (As Amended April 1, 2002)

Section I. Introductory Rules

Scope of Application

Article 1

1. Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the IACAC Rules of Procedure, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing and the IACAC may approve.

2. These Rules shall govern the arbitration, except that where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee in person or via fax, telex or any other means agreed to by the parties, or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last known habitual residence or at his last known place of business. Notice shall be deemed to have been received on the day it is so delivered by any of the means stated in these rules.

2. For the purposes of calculating a period of time under these rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of Arbitration

Article 3

1. The party initiating recourse to arbitration (hereinafter referred to as the "claimant") shall give to the other party (hereinafter referred to as the "respondent") a notice requesting arbitration and shall provide a copy to the Director General of the IACAC, either directly or through the IACAC National Section if one exists in his country of domicile.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The request for arbitration shall at least include the following:

(a) A request that the dispute be submitted to arbitration;

(b) The names and addresses of the parties;

(c) A copy of the arbitration clause or the separate arbitration agreement;

(d) A reference to the contract out of which, or in relation to which, the dispute has arisen, and a copy thereof if the claimant deems it necessary;

(e) The general nature of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) If three arbitrators are to be appointed, designation of one arbitrator, as referred to in Article 5, paragraph 3.

4. The request for arbitration may also include the statement of claim referred to in Article 15.

5. Upon receipt of the notice of arbitration, the Director General of the IACAC or the IACAC National Section shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Representation and Assistance

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II. Composition of the Arbitral Tribunal

Appointment of Arbitrators

Article 5

1. If the parties have not otherwise agreed, three arbitrators shall be appointed.

2. When the parties have agreed that the dispute will be resolved by a single arbitrator, he may be appointed by the mutual agreement of the parties. If the parties have not done so within thirty (30) days from the date on which the notice of arbitration is received by the respondent, the arbitrator will be designated by the IACAC.

3. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator, who will act as the presiding arbitrator of the tribunal.

4. If within thirty (30) days after receipt of the claimant's notification of the appointment of an arbitrator, the other party has not notified the first party with a copy to the Director General of the IACAC either directly or through the IACAC National Section if one exists in his country of domicile, of the arbitrator he has appointed, the arbitrator will be designated by the IACAC.

5. If within thirty (30) days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator will be appointed by the IACAC.

6. In making appointments, the IACAC shall have regard to such considerations as are likely to secure the appointment of independent and impartial arbitrators, and shall also take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

7. The IACAC may request from either party any information it deems necessary in order to discharge its functions.

Challenge of Arbitrators

Article 6

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties and to the IACAC, if appointed by the IACAC, unless they have already been informed by him of these circumstances.

Article 7

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 8

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Articles 6 and 7 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal and to the Director General of the IACAC. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 5 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 9

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the IACAC.

2. If the IACAC sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in these rules.

Replacement of an Arbitrator

Article 10

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to fulfill his functions or in the event of the *de jure* or *de facto* impossibility of performing his function, or if the IACAC determines that there are sufficient reasons to accept the resignation of an arbitrator, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

3. If an arbitrator on a three-person tribunal does not participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and make any decision, ruling or award, notwithstanding the refusal of the third arbitrator to participate. In deciding whether to continue the arbitration or to render any decision, ruling or award, the two other arbitrators shall take into account the stage of the arbitration proceedings, the reasons, if any, stated by the third arbitrator for not participating, as well as such other matters they consider appropriate in the circumstances of the case. If the two arbitrators decide not to continue the arbitration without the participation of the third arbitrator, the IACAC on proof satisfactory to it shall declare the office vacant, and the party that initially appointed him shall proceed to appoint a substitute arbitrator within thirty (30) days following the vacancy declaration. If the designation is not made within the stated term, then the substitute arbitrator will be appointed by the IACAC.

Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 11

If under Articles 8 to 10 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III. Arbitral Proceedings

General Provisions

Article 12

1. Subject to these rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other evidence.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

Place of Arbitration

Article 13

1. If the parties have not reached an agreement regarding the place of arbitration, the place of arbitration may initially be determined by the IACAC, subject to the power of the tribunal to determine finally the place of arbitration within sixty (60) days following the appointment of the last arbitrator. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the case.

2. Notwithstanding the foregoing, the tribunal may meet in any place it may deem appropriate to hold hearings, hold meetings for consultation, hear witnesses, or inspect property or documents. The parties shall be given sufficient written notice to enable them to be present at any such proceeding.

Language

Article 14

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defense, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defense, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of Claim

Article 15

1. Unless the statement of claim was contained in the request for arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators, with a copy to the IACAC. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

(a) The names and addresses of the parties;

(b) A statement of the facts supporting the claim;

(c) The points at issue;

(d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Statement of Defense

Article 16

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defense in writing to the claimant and to each of the arbitrators, with a copy to the IACAC.

2. The statement of defense shall reply to the particulars (b), (c) and (d) of the statement of claim (Article 15, paragraph 2). The respondent may annex to his statement the documents on which he relies for his defense or may add a reference to the documents or other evidence he will submit.

3. In his statement of defense, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim arising out of the same contract, or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The requirements provided in Article 15, paragraph 2, of these Rules shall apply to both any counterclaim or to any claim presented for the purposes of a set-off.

Amendments to the Claim or Defense

Article 17

During the course of arbitral proceedings either party may amend or supplement his claim or defense unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Plea as to the Jurisdiction of the Arbitral Tribunal

Article 18

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objection with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause or an arbitration agreement forms a part.

For the purposes of this Article, an arbitration clause that forms part of a contract and that provides for arbitration under these rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause or the arbitration agreement.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defense or, with respect to a counterclaim, in the reply to the counterclaim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as

a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

Further Written Statements

Article 19

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defense, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of Time

Article 20

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defense) should not exceed forty-five days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Evidence and Hearings (Articles 21 & 22)

Article 21

1. Each party shall have the burden of proving the facts relied on to support his claim or defense.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence that that party intends to present in support of the facts in issue set out in his statement of claim or statement of defense.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 22

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, and the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Interim Measures of Protection

Article 23

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Experts

Article 24

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant document or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 22 shall be applicable to such proceedings.

Default

Article 25

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings.

2. If one of the parties, duly notified under these rules, fails to appear at a hearing without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of Hearings

Article 26

1. The arbitral tribunal may inquire of the parties if they have any further proofs to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Rules

Article 27

A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance shall be deemed to have waived his right to object.

Section IV. The Award

Decisions

Article 28

The arbitral tribunal shall adopt its decisions by a majority vote. When there is no majority, the decision shall be made by the president of the tribunal.

Form and Effect of the Award

Article 29

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties and subject to no appeal. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made, which shall be the place designated in Article 13. Where there are three arbitrators and one of them fails to sign, the award shall state the reasons for the absence of the signature.

5. The award may be made public only with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

Applicable law, Amiable Compositeur

Article 30

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules that it considers applicable.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono*

only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Settlement or Other Grounds for Termination

Article 31

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 29, paragraphs 2 and 4, shall apply.

Interpretation of the Award

Article 32

1. Within thirty days after the receipt of the award, either party may request that the arbitral tribunal give an interpretation of the award. The tribunal shall notify the other party or parties to the proceedings of such request.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 29, paragraphs 2 to 7, shall apply.

Correction of the Award

Article 33

1. Within thirty days after the receipt of the award, either party may request the arbitral tribunal, which shall notify the other party, to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of Article 29, paragraphs 2 to 7, shall apply.

Additional Award

Article 34

1. Within thirty days after the receipt of the award, either party may request the arbitral tribunal, which shall notify the other party, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of Article 29, paragraphs 2 to 7, shall apply.

Costs (Articles 35 to 38)

Article 35

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

(a) The fees of the arbitral tribunal, to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 36;

(b) The travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) The administrative fee and other service charges of the IACAC; which shall be set by the Arbitrator Nominating Committee of the IACAC in accordance with the schedule in effect at the time of the commencement of the arbitration. The committee may set a provisional fee when the proceedings are instituted and the final amount before the award is rendered, so that such amount may be taken into account by the tribunal when rendering its award.

Article 36

1. The fees of the arbitral tribunal and the administrative fees for the IACAC shall be set in accordance with the schedule in effect at the time of commencement of the arbitration. The fees shall be calculated on the basis of the amount involved in the arbitration; if that amount cannot be determined, the fees shall be set discretionally.

2. The amount between the maximum and minimum range in the schedule shall be set in accordance with the nature of the dispute, the complexity of the subject matter and any other relevant circumstances of the case.

Article 37

1. The costs of arbitration shall be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 35 in the text of that order or award.

3. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Articles 32 to 34.

Article 38

Deposit of Costs

1. The arbitral tribunal, on its establishment, or the Arbitrator Nominating Committee of the IACAC within its purview, may request each party to deposit an equal amount as an advance for the costs referred to in Article 35, paragraphs (a), (b), (c) and (f).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. When a party so requests, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the IACAC, which may make any comments to the arbitral tribunal which it deems appropriate concerning the amounts of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. Should one of the parties fail to pay its deposits in full, the other party may do so in its stead. If payment in full is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Transitory Article

Article 39

Any disputes arising under contracts that stipulate resolution of such disputes pursuant to the IACAC Rules of Procedure and that have not been submitted to an arbitral tribunal as of the date on which these rules enter into effect shall be subject to these rules in their entirety.

Dated: November 15, 2001.

Jeffrey Kovar,

Assistant Legal Advisor for Private International Law, Department of State.

[FR Doc. 02–2860 Filed 2–26–02; 8:45 am]

BILLING CODE 4710–08–P

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 503

Freedom of Information Act Regulations

AGENCY: The Broadcasting Board of Governors.

ACTION: Final rule.

SUMMARY: This regulation establishes rules for implementing the Freedom of Information Act (FOIA) for the newly created Broadcasting Board of Governors (BBG or Agency).

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra J. Dunham, FOIA/Privacy Act Officer at (202) 260–4404.

SUPPLEMENTARY INFORMATION: Public Law 103–236, the United States International Broadcasting Act of 1994, created the Broadcasting Board of Governors (BBG) within the United States Information Agency (USIA). By law, the bipartisan Board consisted of nine members—eight members who were appointed by the President, by and with the advice and consent of the Senate, and the USIA Director.

On October 21, 1998, President Clinton signed Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999. Contained as Division G of this legislation was the Foreign Affairs Reform and Restructuring Act of 1998, which reorganized the foreign affairs agencies of the U.S. Government. Under this reorganization, the Broadcasting Board of Governors became an independent Federal entity on October 1, 1999. Under the reorganization of the foreign affairs agencies, the responsibilities of the Board remained intact, and the membership of the Board remained the same, except that the USIA Director was replaced by the Secretary of State.

The BBG has responsibility for oversight of all United States sponsored, non-military broadcasting to foreign countries. The BBG oversees the operations of the International Broadcasting Bureau (IBB), which includes the worldwide broadcasting services of the Voice of America (VOA) and WORLDNET, the Office of Cuba Broadcasting (OCB), Engineering and Technical Operations, and of the two grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL) and Radio Free Asia (RFA). The Board members also serve as members of the Board of Directors for both RFE/RL and RFA.

The Board's authorities include:

- To review and evaluate the mission and operation of, and assess the quality, effectiveness, and professional integrity of, all such activities within the broad foreign policy objectives of the United States;
- To make and supervise grants for broadcasting and related activities for RFE/RL and RFA;
- To review, evaluate, and determine, at least annually, the addition or deletion of language services; and
- To allocate funds appropriated for international broadcasting activities among the various elements of the IBB and grantees, subject to reprogramming notification.

In total, the BBG broadcasting entities transmit over 2,000 hours of weekly programming in 61 languages to over 100 million weekly listeners worldwide.

This regulation revises 22 CFR part 503, which contains the Freedom of Information Act regulations of the former United States Information Agency and establishes regulations of the BBG for implementing the Freedom of Information Act.

In accordance with 5 U.S.C. 605(b), the BBG certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered being a significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Dated: February 19, 2002.

Brian T. Conniff,

Executive Director, Broadcasting Board of Governors.

List of Subjects in 22 CFR Part 503

Freedom of Information.

Accordingly, 22 CFR part 503 is revised to read as follows:

PART 503—FREEDOM OF INFORMATION ACT REGULATION

Sec.

Authority: 5 U.S.C. 552 Reform Act of 1986 as amended by Pub. L. 99–570; sec. 1801–1804; U.S.C. 2658; 5 U.S.C. 301; 13 U.S.C. 8, E.O. 10477, as amended; 47 FR 9320, Apr. 2, 1982, E.O. 12356. 5 U.S.C. 552 (1988 & Supp. III 1991) as amended by Freedom of Information Reform Act of 1986, Pub. L. 99–570, Title I, sections 1801–1804, 100 Stat. 3207, 3207–48–50 (1986)(codified at 5 U.S.C. 552 (1988)); 22 U.S.C. 2658 (1988); 5 U.S.C. 301 (1988); 13 U.S.C. 8 (2988); E.O. 10477, 3 CFR 958 (1949–1953) as amended by E.O. 10822, 3 CFR 355 (1959–1963), E.O. 12292, 3 FR 134 (1982), E.O. 12356, 3 CFR 166 (1983), E.O. 12958 (1995).

§503.1 Introduction and definitions.

(a) *Introduction.* The Freedom of Information Act (FOIA) and this part apply to all records of The Broadcasting Board of Governors (BBG). As a general policy BBG follows a balanced approach in administering the FOIA. We recognize the right of public access to information in the Agency's possession, but we also seek to protect the integrity of the Agency's internal processes. This policy calls for the fullest possible disclosure of records consistent with those requirements of administrative necessity and confidentiality which are recognized by the FOIA.

(b) *Definitions:*

Access Appeal Committee or Committee means the Committee delegated by the Agency Head for making final agency determinations regarding appeals from the initial denial of records under the FOIA.

Agency or BBG means the Broadcasting Board of Governors. It includes all parts of the BBG in the U.S. and its worldwide operations.

Commercial use, when referring to a request, means that the request is from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and how the records will be used. The identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is made by a representative of the news media, the request shall be deemed to be for a non-commercial use.

Department means any executive department, military department, government corporation, government controlled corporation, any independent regulatory agency, or other establishment in the executive branch of the Federal Government. A private organization is not a department even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession and control of the BBG.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audiovisual materials, and magnetic tapes, cards and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education.

FOIA means the Freedom of Information Act, section 552 of title 5, United States Code, as amended.

Freedom of Information Officer means the BBG official who has been delegated

the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for the purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Records (and any other term used in this section in reference to information) include any information that would be an agency record subject to the requirements of this section when maintained by the Agency in any format, including an electronic format. Records also include any handwritten, typed or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards, magnetic tapes, cards, or discs; paper tapes; audio or video recordings, maps, photographs, slides, microfilm, and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Reports does not include books, magazines, pamphlets, or other reference material in formally organized and officially designated BBG libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. *News* means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists shall be considered representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract or a requester's past publication record may show such a basis.

Request means asking in writing for records whether or not the request refers specifically to the FOIA.

Review means examining the records to determine which portions, if any, may be released, and any other processing that is necessary to prepare the records for release. It includes only the first examination and processing of the requested documents for purposes of determining whether a specific exemption applies to a particular record or portion of a record.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

§503.2 Making a request.

(a) *How to request records.* All requests for documents shall be made in writing. Requests should be addressed to The Broadcasting Board of Governors (BBG), FOIA/Privacy Act Officer, Office of the General Counsel, 330 Independence Avenue, SW, Suite 3349, Washington, DC 20237; telephone (202) 260–4404; or fax (202) 260–4394. Write the words "Freedom of Information Act Request" on the envelope and letter.

(b) *Details in your letter.* Your request for documents should provide as many details as possible that will help us find the records you are requesting. If there is insufficient information, we will ask you to provide greater details. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, you may call the FOIA Office to request a copy of the Agency's booklet "Guide and Index of Records," or access the same information via the Internet on BBG's World Wide Web site (*http://www.ibb.gov*). The more specific the request for documents, the sooner the Agency will be able to respond to your request(s).

(c) *Requests not handled under FOIA.* We will not provide documents requested under the FOIA and this part if the records are currently available in the National Archives, subject to release through the Archives, or commonly sold to the public by it or another agency in accordance with statutory authority (for example, records currently available from the Government Printing Office or the National Technical Information Service). Agency records that are normally freely available to the general public, such as BBG press releases, are not covered by the FOIA. Requests for documents from Federal departments, Chairmen of Congressional committees or subcommittees and court orders are not FOIA requests.

(d) *Referral of requests outside the agency.* If you request records that were created by or provided to us by another Federal department, we may refer your request to or consult with that department. We may also refer requests for classified records to the department that classified them. In cases of referral, the other department is responsible for processing and responding to your request under that department's regulation. When possible, we will notify you when we refer your request to another department.

(e) *Responding to your request.*—(1) *Retrieving records.* The Agency is required to furnish copies of records only when they are in our possession and control. If we have stored the records you want in a record retention center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. The Agency's record retention policies are set forth in the General Records Schedules of the National Archives and Records Administration and in BBG's Records Disposition Schedule, which establish time periods for keeping records before they may be destroyed.

(2) *Furnishing records.* (i) The Agency is only required to furnish copies of records that we have or can retrieve. We are not compelled to create new records. The Agency will aid requesters by providing records and information in the form requested, including electronic format, if we can readily reproduce them in that form or format.

(ii) We may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records, in paper form or electronically, rather than copying them all. If the effort to produce records in electronic format would significantly interfere with the operations of the Agency, we will consider the effort to be an unreasonable search.

(iii) The Agency is required to furnish only one copy of a record. If we are unable to make a legible copy of a record to be released, we will not attempt to reconstruct it. Rather we will furnish the best copy possible and note its poor quality in our reply or on the copy.

(iv) If we cannot accommodate your request for form or format, we will provide responsive, nonexempt information in a reasonably accessible form.

§503.3 Availability of agency records.

(a) *Release of records.* If we have released a record or part of a record to others in the past, we will ordinarily release it to you also. This principle does not apply if the previous release

was an unauthorized disclosure. However, we will not release it to you if a statute forbids this disclosure and we will not necessarily release it to you if an exemption applies in your situation and did not apply or applied differently in the previous situation.

(b) *Denial of requests.* All denials are in writing and describe in general terms the material withheld and state the reasons for the denial, including a reference to the specific exemption of the FOIA authorizing the withholding or deletion. The denial also explains your right to appeal the decision and it will identify the official to whom you should send the appeal. Denial letters are signed by the person who made the decision to deny all or part of the request, unless otherwise noted.

(c) *Unproductive searches.* We will make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, you will nevertheless be provided the opportunity to appeal the adequacy of the Agency's search. However, if your request is for records that are obviously not connected with this Agency or your request has been provided to us in error, a "no records" response will not be considered an adverse action and you will not be provided an opportunity to appeal.

(d) *Appeal of denials.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and address it to the official identified in the denial letter. Your appeal letter must be dated and postmarked within 30 calendar days from the date of the Agency's denial letter. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your appeal by explaining your reasons for wanting the records. However, you are not required to give any explanation. Your appeal will be reviewed by the Agency's Access Appeal Committee that consists of senior Agency officials. When the Committee responds to your appeal, that constitutes the Agency's final action on the request. If the Access Appeal Committee grants your appeal in part or in full, we will send the records to you promptly or set up an appointment for you to inspect them. If the decision is to deny your appeal in part or in full, the final letter will state the reasons for the decision, name the officials responsible for the decision, and inform you of the FOIA provisions for judicial review.

§503.4 Time limits.

(a) *General.* The FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time Allowed.* (1) We will decide whether to release records within 20 working days after your request reaches the appropriate area office that maintains the records you are requesting. When we decide to release records, we will actually provide the records at that time, or as soon as possible after that decision, or let you inspect them as soon as possible thereafter.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate reviewing official.

(3) (i) The FOIA Officer or appeal official may extend the time limits in unusual circumstances for initial requests or appeals, up to 10 working days. We will notify you in writing of any extensions. "Unusual circumstances" include situations where we: Search for and collect records from field facilities, records centers or locations other than the office processing the records; search for, collect, or examine a great many records in response to a single request; consult with another office or department that has substantial interest in the determination of the request; and/or conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

(ii) If an extra ten days still does not provide sufficient time for the Agency to deal with your request, we will inform you that the request cannot be processed within the statutory time limit and provide you with the opportunity to limit the scope of your request and/or arrange with us a negotiated deadline for processing your request.

(iii) If you refuse to reasonably limit the scope of your request or refuse to agree upon a time frame, the Agency will process your case, as it would have, had no modification been sought. We will make a diligent, good faith effort to complete our review within the statutory time frame.

§503.5 Records available for public inspection.

(a) To the extent that they exist, we will make the following records of general interest available for you in paper form or electronically for inspection or copying:

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications. (*See* §503.8(e) of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but which have not been published in the **Federal Register.**

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in §503.8(b) and (g) of this part.)

(4) In addition to such records as those described in this paragraph (a), we will make available to any person a copy of all other Agency records, in the format requested, if available, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and §§ 503.8 and 503.9 of this part.

(b) Before releasing these records, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree (*See* § 503.8(f)).

(c) The Agency's FOIA Guide and Index is available electronically via the Internet, or you may request a copy of it by mail.

§503.6 Restrictions on some Agency records.

Under the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended), the BBG is prohibited from disseminating within the United States information about the U.S., its people, and its policies when such materials have been prepared by the Agency for audiences abroad. This includes films, radio scripts and tapes, videotapes, books, and similar materials produced by the Agency. However, this law does provide that upon request, such information shall be made available at BBG, for examination only, by representatives of the press, magazines, radio systems and stations, research students or scholars and available, for examination only, to Members of Congress.

§503.7 Fees.

(a) *Fees to be charged—categories of requests.* Paragraphs (a)(1) though (3) and (b) through (e) of this section explain each category of request and the type of fees that we will generally charge. However, for each of these categories, the fees may be limited,

waived, or reduced for the reasons given in paragraph (e) of this section.

"Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act (FOIA). Requests from Federal agencies and court orders for documents are not included within this definition.

"Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include the process of researching or resolving general legal, or policy issues regarding exemptions.

"Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also and line-by-line examination to identify responsive portions of a document.

(1) *Commercial use request.* If your request is for a commercial use, BBG will charge you the costs of search, review and duplication. "Commercial use" means that the request is from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and how the records will be used; the identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases may indicate the purpose or use is not necessarily determinative. When a request is made by a representative of the news media, a purpose of use which supports the requester's news dissemination function is deemed to be a non-commercial use.

(2) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, BBG will charge you only for the duplication of documents. Also BBG will not charge you the copying costs for the first 100 pages of duplication. "Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education. "Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry. "Representative of the news media" means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis and the requester's past publication record may show such a basis.

(3) *Other requesters.* If your request is not the kind described by paragraph (a)(1) or (a)(2) of this section, then the BBG will charge you only for search and duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *Fees to be charged—general provisions.* (1) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(2) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. We have estimated that cost to be $5.00.

(3) If we determine that you are acting alone or with others to break down a single request into a series of requests in order to avoid or reduce the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(4) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. The accrual of interest will stop upon receipt of the fee, rather than upon its processing by BBG. Interest will be at the rate prescribed in section 3717 of Title 32 U.S.C.

(c) *Fee Schedule—BBG will charge the following fees:* (1) Manual searching for or reviewing of records:

(i) When performed by employees at salary grade GS–1 through GS–8 or FS–9 through FS–5—an hourly rate of $10.00 will be charged;

(ii) When performed by employees at salary grade GS–9 through GS–13 or FS–5 through FS–2—an hourly rate of $20.00 will be charged;

(iii) When performed by employees at salary grade GS–14 or above or FS–2 or above—an hourly rate of $36.00 will be charged.

(iv) When a search involves employees at more than one of these levels, we will charge the appropriate rate for each.

(2) Computer searching and printing. Except in unusual cases, the cost of computer time will not be a factor in calculating the two free hours of search time. In those unusual cases, where the cost of conducting a computerized search significantly detracts from the Agency's ordinary operations, no more than the dollar cost of two hours of manual search time shall be allowed. For searches conducted beyond the first two hours, the Agency shall only charge the direct costs of conducting such searches.

(3) Photocopying standard size pages—$0.15 per page.

(4) Photocopying odd-size documents (such as punchcards or blueprints) or reproducing other records (such as tapes)—the actual cost of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) Certifying that records are true copies—this service is not required by the FOIA. If we agree to provide it, we will charge $10.00 per certification.

(6) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual cost.

(7) Performing any other special service that you request and to which we agree—actual cost of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees.—(1) Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(2) *Advance payment.* If you have failed to pay previous bills in a timely

manner, or if our initial review of your request indicates that we will charge you fees exceeding $250.00, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. In such cases, the administrative time limits as described in Sec. 503.4(b), will begin only after we come to an agreement with you over payment of fees, or decide that a fee waiver or reduction is appropriate.

(e) *Waiver or reduction of fees.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests (paragraphs (e)(1) and (e)(2) of this section):

(1) It is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In making this determination, we may consider:

(i) Whether the requester is in a position to contribute to public understanding;

(ii) Whether the requester has such knowledge or expertise as may be necessary to understand the information; and

(iii) Whether the requester's intended use of the information would be likely to disseminate the information among the public.

(2) It is not primarily in the commercial interest of the requester. Commercial interests include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests; so do nonprofit corporations, individuals, unions, and other associations.

(3) You must make your request for a waiver or reduction at the same time you make your request for records. Only the FOIA Officer may make the decision whether to waive or reduce the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate the appeal official.

§ 503.8 Exemptions.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. These exemptions and their application by the Agency are described below. In some cases, more than one exemption may apply to the same document. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Agency.

(a) *Exemption one—National defense and foreign policy.* We are not required to release records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified according to such Executive Order. Executive Order No. 12958 (1995) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials with knowledge of those countries and/or with officials of the Department of State. We may also have in our possession records classified by another agency. If we do, we may consult with that agency or may refer your request to that agency for their direct response to you. If possible, we will notify you that we have made such a referral.

(b) *Exemption two—Internal personnel rules and practices.* We are not required to release records that are related solely to the internal personnel rules and practices of an agency. We may withhold routine internal agency procedures such as guard schedules and luncheon periods. We may also withhold internal records the release of which would help some persons circumvent the law or Agency regulations.

(c) *Exemption three—Records exempted by other statutes.* We are not required to release records if another statute specifically allows us to withhold them. Another statute may be used only if it absolutely prohibits disclosure or if it sets forth criteria identifying particular types of material to be withheld (for example, the statute discussed in § 503.6).

(d) *Exemption four—Trade secrets and confidential commercial or financial information.* We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

(1) *Trade secrets:* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. A direct relationship is necessary between the trade secret and the productive process.

(2) Commercial or financial information, obtained from a person, and is privileged or confidential.

(i) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances).

(ii) Information is obtained from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by BBG or another Federal agency.

(iii) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege, or the work-product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the Government, unless the providing of the information to the Government rendered the information no longer protectible in civil discovery.

(iv) Information is "confidential" if it meets one of the following tests:

(A) Disclosure may impair the Government's ability to obtain necessary information in the future;

(B) Disclosure would substantially harm the competitive position of the person who submitted the information;

(C) Disclosure would impair other Government interests, such as program effectiveness and compliance; or

(D) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(3) *Designation of certain confidential information.* A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under Exemption four. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. The legend prescribed by a request for proposal or request for quotations according to any agency regulation establishing a substitute for the language is sufficient but not necessary for this purpose. Any such designation will expire ten years after the records were submitted to the Government.

(4) *Predisclosure notification.* The procedures in this paragraph apply to records that were submitted to the Government and where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption four. Certain exceptions to these procedures are stated in paragraph (d)(5) of this section.

(i) When we receive a request for such records and we determine that we may

be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(ii) The submitter has ten (10) working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(iii) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records and the submitter still does not agree, we will send a written notice to the submitter stating briefly why we did not sustain its objections and we will provide a copy of the records as we intend to release them. The notice will state that we will disclose the records five (5) working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(iv) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(v) Whenever we send a notice to a submitter under paragraph (d)(4)(i) of this section, we will notify you that we are giving the submitter a notice and an opportunity to object.

(5) Exceptions to predisclosure notification. The notice requirements in paragraph (d)(4) of this section do not apply in the following situations:

(i) We decide not to disclose the records;

(ii) The information has previously been published or made generally available;

(iii) We have already notified the submitter of previous requests for the same records and have come to an understanding with that submitter about the records;

(iv) Disclosure is required by a statute other than the FOIA;

(v) Disclosure is required by a regulation, issued after notice and opportunity for public comment that specifies narrow categories of records that are to be disclosed under the FOIA. In this case a submitter may still designate records as described in paragraph (d)(3) of this section and in exceptional cases, at our discretion, may follow the notice procedures in paragraph (d)(4) of this section;

(vi) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(4)(iii) of this section (although this notice need not explain our decision or include a copy of the records); and

(vii) We withhold the information because another statute requires its withholding.

(e) *Exemption five—Internal memoranda.* This exemption covers internal Government communications and notes that fall within a generally recognized evidentiary privilege. Internal Government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most common applicable privileges are:

(1) *The deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of this privilege is to prevent injury to the quality of the agency decision making process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. This privilege continues to protect pre-decisional documents even after a decision is made. We will release purely factual material in a deliberative document unless that material is otherwise exempt. However, purely factual material in a deliberative document is within this privilege if:

(i) It is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated; or

(ii) It would reveal the nature of the deliberative portions, or

(iii) Its disclosure would in some other way make possible an intrusion into the decision making process.

(2) *Attorney-client privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the Government where an attorney-client relationship exists (for example, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance, and/or when the attorney has given advice to the client.

(3) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (usually BBG attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes factual material in such documents as well as material revealing opinions and tactics. The privilege continues to protect the documents even after the litigation is closed.

(f) *Exemption six—Clearly unwarranted invasion of personal privacy.* We may withhold personnel, medical, and similar files, and personal information about individuals if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(1) *Balancing test.* In deciding whether to release records that contain personal or private information about someone else to a requester, we weigh the foreseeable harm of invading that individual's privacy against the public benefit that would result from the release of the information. In our evaluation of requests for records, we attempt to guard against the release of information that might involve a violation of personal privacy by a requester being able to "piece together items" or "read between the lines" information that would normally be exempt from mandatory disclosure.

(2) *Information frequently withheld.* We frequently withhold such information as home addresses, home telephone numbers, ages, minority group status, social security numbers, individual's benefits, earning records, leave records, etc.

(g) *Exemption seven—Law enforcement.* We are not required to release information or records that the Government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(1) *Enforcement proceedings.* We may withhold information when release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings, investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases, we may refuse to confirm or deny the existence of records that relate to violations in order not to disclose that an

investigation is in progress or may be conducted.

(2) *Fair trial or impartial adjudication.* We may withhold records when release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(3) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, or retaliation.

(4) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local or foreign Government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record or information in it has been compiled by a criminal law enforcement authority conducting a criminal investigation or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(5) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(6) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

(h) *Exemptions eight and nine—records on financial institutions and records on wells.*

(1) Exemption eight permits us to withhold records about regulation or supervision of financial institutions.

(2) Exemption nine permits the withholding of geological and geophysical information and data, including maps concerning wells.

§ 503.9 Electronic records.

(a) *Introduction.* This section applies to all records of the BBG, including all of its worldwide operations. Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspections and at the request of any person for any public or private use. The increase in the Government's use of computers enhances the public's access to Government information. This section addresses and explains how records will be reviewed and released when the records are maintained in electronic format. Documentation not previously subject to the FOIA when maintained in a non-electronic format is not made subject to FOIA by this law.

(b) *Definitions.—(1) Compelling need.* Obtaining records on an expedited basis because of an imminent threat to the life or physical safety of an individual, or urgently needed by an individual primarily engaged in disseminating information to the public concerning actual or alleged Federal Government activities.

(2) *Discretionary disclosure.* Records or information normally exempt from disclosure will be released whenever it is possible to do so without reasonably foreseeable harm to any interest protected by an FOIA exemption.

(3) *Electronic reading room.* The room provided which makes electronic records available.

(c) *Electronic format of records.* (1) Materials such as agency opinions and policy statements (available for public inspection and copying) will be available electronically by accessing the BBG's Home Page via the Internet at *http://www.ibb.gov.* To set up an appointment to view such records in hard copy or to access the Internet via the BBG's computer, please contact the FOIA/Privacy Act Officer at (202) 260–4404.

(2) We will make available for public inspection and copying, both electronically via the Internet and in hard copy, those records that have been previously released in response to FOIA requests, when we determine the records have been or are likely to be the subject of future requests.

(3) We will provide both electronically through our Internet address and in hard copy a "Guide" on how to make an FOIA request, and an Index of all Agency information systems and records that may be requested under the FOIA.

(4) We may delete identifying details when we publish or make available the index and copies of previously-released records to prevent a clearly unwarranted invasion of personal privacy.

(i) We will indicate the extent of any deletions made from the place the deletion was made, if possible.

(ii) We will not reveal information about deletions if such disclosure would harm an interest protected by an exemption.

(d) *Honoring form or format requests.* We will aid requesters by providing records and information in the form requested, including electronic format, if we can readily reproduce them in that form or format. However, if we cannot accommodate you, we will provide responsive, nonexempt information in a reasonably accessible form.

(1) We will make a reasonable effort to search for records kept in an electronic format. However, if the effort would significantly interfere with the operations of the agency or the agency's use of its computers, we will consider the effort to be unreasonable.

(2) We need not create documents that do not exist, but computer records found in a database rather than in a file cabinet may require the application of codes or some form of programming to retrieve the information. This application of codes or programming of records will not amount to the creation of records.

(3) Except in unusual cases, the cost of computer time will not be a factor in calculating the two free hours of search time available under Sec. 503.7. In those unusual cases, where the cost of conducting a computerized search significantly detracts from the agency's ordinary operations, no more than the dollar cost of two hours of manual search time shall be allowed. For searches conducted beyond the first two hours, the agency shall only charge the direct costs of conducting such searches.

(e) *Technical feasibility of redacting non-releasable material.* We will make every effort to indicate the place on the record where a redaction of non-releasable material is made, and an FOIA citation noting the applicable exemption for the deletion will also be placed at the site. If unable to do so, we will notify you of that fact.

(f) *Ensuring timely response to request.* We will make every attempt to respond to FOIA requests within the prescribed 20 working-day time limit. However, processing some requests may require additional time in order to

properly screen material against the inadvertent disclosure of material covered by the exemptions.

(1) *Multitrack first-in first-out processing.* (i) Because the agency expects to be able to process its requests without a backlog of cases, BBG will not institute a multitract system. Those cases that may be handled easily, because they require only a few documents or a simple answer, will be handled immediately by an FOIA specialist.

(ii) If you wish to qualify for faster processing, you may limit the scope of your request so that we may respond more quickly.

(2) *Unusual circumstances.* (i) The agency may extend for a maximum of ten working days the statutory time limit for responding to an FOIA request by giving notice in writing as to the reason for such an extension. The reasons for such an extension may include: the need to search for and collect requested records from multiple offices; the volume of records requested; and, the need for consultation with other components within the agency.

(ii) If an extra ten days still does not provide sufficient time for the Agency to deal with your request, we will inform you that the request cannot be processed within the statutory time limit and provide you with the opportunity to limit the scope of your request and/or arrange with us a negotiated deadline for processing your request.

(iii) If you refuse to reasonably limit the scope of your request or refuse to agree upon a time frame, the agency will process your case, as it would have, had no modification been sought. We will make a diligent, good-faith effort to complete our review within the statutory time frame.

(3) *Grouping of requests.* We will group together requests that clearly involve related material that should be considered as a single request.

(i) If you make multiple or related requests for similar material for the purpose of avoiding costs, we will notify you that we are grouping together your requests, and the reasons why.

(ii) Multiple or related requests may also be grouped, such as those involving requests and schedules but you will be notified in advance if we intend to do so.

(g) *Time periods for agency consideration of requests.*—(1) *Expedited access.* We will authorize expedited access to requesters who show a compelling need for access, but the burden is on the requester to prove that expedition is appropriate. We will determine within ten days whether or not to grant a request for expedited access and we will notify the requester of our decision.

(2) *Compelling need for expedited access.* Failure to obtain the records within an expedited deadline must pose an imminent threat to an individual's life or physical safety; or the request must be made by someone primarily engaged in disseminating information, and who has an urgency to inform the public about actual or alleged Federal Government activity.

(3) *How to request expedited access.* We will be required to make factual and subjective judgments about the circumstances cited by requesters to qualify them for expedited processing. To request expedited access, your request must be in writing and it must explain in detail your basis for seeking expedited access. The categories for compelling need are intended to be narrowly applied:

(i) *A threat to an individual's life or physical safety.* A threat to an individual's life or physical safety should be imminent to qualify for expedited access to the records. You must include the reason why a delay in obtaining the information could reasonably be foreseen to cause significant adverse consequences to a recognized interest.

(ii) *Urgency to inform.* The information requested should pertain to a matter of a current exigency to the American public, where delay in response would compromise a significant recognized interest. The person requesting expedited access under an "urgency to inform," must be primarily engaged in the dissemination of information. This does not include individuals who are engaged only incidentally in the dissemination of information. "Primarily engaged" requires that information dissemination be the main activity of the requester. A requester only incidentally engaged in information dissemination, besides other activities, would not satisfy this requirement. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

(4) *Estimation of matter denied.* The agency will try to estimate the volume of any denied material and provide the estimate to the requester, unless doing so would harm an interest protected by an exemption.

(h) *Computer redaction.* The agency will identify the location of deletions in the released portion of the records, and where technologically possible, will show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

(i) *Annual report on FOIA activities.* Reports on FOIA activities are submitted each fiscal year to the Department of Justice, and are due by February 1 of every year. The BBG's report will be available both in hard copy and through the Internet. The Department of Justice will also report all Federal agency FOIA activity through electronic means.

(j) *Reference materials and guides.* The agency has available in hard copy, and electronically through the Internet, a guide for requesting records under the FOIA, and an index and description of all major information systems of the agency. The guide is a simple explanation of what the FOIA is intended to do, and how you can use it to access BBG records. The Index explains the types of records that may be requested from the Agency through FOIA requests and why some records cannot, by law, be made available by the BBG.

[FR Doc. 02–4550 Filed 2–26–02; 8:45 am]
BILLING CODE 8610–02–P

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 505

Privacy Act Regulations

AGENCY: The Broadcasting Board of Governors.

ACTION: Final rule.

SUMMARY: The Broadcasting Board of Governors (BBG or Agency) revises the Privacy Act regulations of the former United States Information Agency to establish implementation regulations.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra J. Dunham, FOIA/Privacy Officer, telephone (202) 260–4404.

SUPPLEMENTARY INFORMATION: Public Law 103–236, the United States Broadcasting Act of 1994, created the BBG within the United States Information Agency (USIA). By law, the bipartisan board consisted of nine members-eight members who were appointed by the President, by and with the advice and consent of the Senate, and the USIA Director.

On October 21, 1998, President Clinton signed Pub. L. 105–277; the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999. Contained as Division G of this legislation was the Foreign Affairs Reform and Restructuring Act of 1998, which reorganized the foreign

affairs agencies of the U.S. Government. Under this reorganization, the Broadcasting Board of Governors became an independent Federal entity on October 1, 1999. Under the reorganization of the foreign affairs agencies, the responsibilities of the Board remained intact, and the membership of the Board remained the same, except that the USIA Director was replaced by the Secretary of State.

The BBG has responsibility for oversight of all United States sponsored, non-military broadcasting to foreign countries. The BBG oversees the operations of the International Broadcasting Bureau (IBB), which includes the worldwide broadcasting services of the Voice of America (VOA), WORLDNET, the Office of Cuba Broadcasting (OCB), Engineering and Technical Operations, and of the two grantee organizations, Radio Free Europe/Radio Liberty (RFEIRL) and Radio Free Asia (RFA). The Board members also serve as members of the Board of Directors for both RFE/RL and RFA. The Board's authorities include:

- To review and evaluate the mission and operation of, and assess the quality, effectiveness, and professional integrity of, all such activities within the broad foreign policy objectives of the United States;
- To make and supervise grants for broadcasting and related activities for RFE/RL and RFA;
- To review, evaluate and determine, at least annually, the addition or deletion of language services; and
- To allocate funds appropriated for international broadcasting activities among the various elements of the IBB and grantees, subject to reprogramming notification.

In total, the BBG broadcasting entities transmit over 2,000 hours of weekly programming in 61 languages to over 100 million weekly listeners worldwide.

The Privacy Act of 1974 (5 U.S.C. 552a) is a Federal law which requires Federal agencies to limit the manner in which they collect, use and disclose information about American citizens or lawful permanent residents of the United States. The Privacy Act also provides that, upon request, an individual has the right to access any record maintained on herself/himself in an agency's files, and has the right to request correction of or amendment to that record.

In accordance with 5 U.S.C. 605(b), the BBG certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Dated: February 19, 2002.

Brian T. Conniff,

Executive Director, Broadcasting Board of Governors.

List of Subjects in 22 CFR Part 505

Privacy.

Accordingly Part 505 is revised to read as follows:

PART 505—PRIVACY ACT REGULATION

Sec.

Authority: Pub. L. 93–579, 88 Stat. 1897; 5 U.S.C. 552a.

§ 505.1 Purpose and scope.

The Broadcasting Board of Governors (BBG) will protect individuals' privacy from misuses of their records, and grant individuals access to records concerning them which are maintained by the Agency's domestic and overseas offices, consistent with the provisions of Public Law 93-579, 88 Stat. 1897; 5 U.S.C. 552a, the Privacy Act of 1974, as amended. The Agency has also established procedures to permit individuals to amend incorrect records, to limit the disclosure of personal information to third parties, and to limit the number of sources of personal information. The Agency has also established internal rules restricting requirements of individuals to provide social security account numbers.

§ 505.2 Definitions.

(a) Access Appeal Committee (AAC)—the body established by and responsible to the Broadcasting Board for reviewing appeals made by individuals to amend records held by the Agency.

(b) Agency, BBG, our, we or us—The BBG, its offices, divisions, branches and its worldwide operations.

(c) Amend—to make a correction to or expunge any portion of a record about an individual which that individual believes is not accurate, relevant, timely or complete.

(d) Individual or you—A citizen of the United States or an alien lawfully admitted for permanent residence.

(e) Maintain—Collect, use, store, disseminate or any combination of these record keeping functions; exercise of control over and hence responsibility and accountability for systems of records.

(f) Record—Any information maintained by the Agency about an individual that can be reproduced, including finger or voice prints and photographs, and which is retrieved by that particular individual's name or personal identifier, such as a social security number.

(g) Routine use—With respect to the disclosure of a record, the use of such record for a purpose, which is compatible with the purpose for which it was collected. The common ordinary purposes for which records are used and all of the proper and necessary uses even if any such uses occur infrequently.

(h) Statistical record—A record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 12 U.S.C.8.

(i) System of records—A group of records under the maintenance and control of the Agency from which information is retrieved by the name or personal identifier of the individual.

(j) Personnel record—Any information about an individual that is maintained in a system of records by the Agency that is needed for personnel management or processes such as staffing, employee development, retirement, grievances and appeals.

(k) Worldwide Operations—Any of the foreign service establishments of the Agency.

§ 505.3 Procedures for requests.

(a) The agency will consider all written requests received from an individual for records pertaining to herself/himself as a request made under the Privacy Act of 1974, as amended (5 U.S.C. 552a) whether or not the individual specifically cites the Privacy Act when making the request.

(b) All requests under the Privacy Act should be directed to the FOIA/Privacy Act Office, Office of the General

Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237, which will coordinate the search of all systems of records specified in the request. Requests should state name, date of birth, and social security number.

(c) Requests directed to any of the Agency's worldwide establishments which involve routine unclassified, administrative and personnel records available only at those establishments may be released to the individual by the establishment if it determines that such a release is authorized by the Privacy Act. All other requests shall be submitted by the establishment to the FOIA/Privacy Act Office, Office of the General Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237, and the individual shall be so notified of this section in writing, when possible.

(d) In those instances where an individual requests records pertaining to herself/himself, as well as records pertaining to another individual, group or some other category of the Agency's records, only that portion of the request which pertains to records concerning the individual will be treated as a Privacy Act request. The remaining portions of such a request will be processed as a Freedom of Information Act request and sent to the office noted in paragraph (b) of this section.

§ 505.4 Requirements and identification for making requests.

(a) When you seek access to Agency records, you may present your written request, fax it to (202) 260–4394 or mail it to the FOIA/Privacy Act Office, Office of the General Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237. The FOIA/Privacy Act Office may be visited between the hours of 9 a.m. and 3 p.m., Monday through Friday, except for legal holidays.

(b) When you seek access to Agency records, you will be requested to present identification. You must state your full name, date of birth and social security number. You must also include your present mailing address and zip code, and if possible, a telephone number.

(c) When signing a statement confirming your identity, you should understand that knowingly and willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

§ 505.5 Disclosure of information.

(a) In order to locate the system of records that you believe may contain information about you, you should first obtain a copy of the Agency's Notice of Systems of Records. By identifying a particular record system and by furnishing all the identifying information requested by that record system, it would enable us to more easily locate those records which pertain to you. At a minimum, any request should include the information specified in Sec. 505.4(b).

(b) In certain circumstances, it may be necessary for us to request additional information from you to ensure that the retrieved record does, in fact, pertain to you.

(c) All requests for information on whether or not the Agency's systems of records contain information about you will be acknowledged within 20 working days of receipt of that request. The requested records will be provided as soon as possible thereafter.

(d) If the Agency determines that the substance of the requested record is exceptionally sensitive, we will require you to furnish a signed, notarized statement that you are in fact the person named in the file before granting access to the records.

(e) Original records will not be furnished subject to and in accordance with fees established in §505.11.

(f) Denial of access to records:

(1) The requirements of this section do not entitle you access to any information compiled in reasonable anticipation of a civil action or proceeding.

(2) Under the Privacy Act, we are not required to permit access to records if the information is not retrievable by your name or other personal identifier; those requests will be processed as Freedom of Information Act requests.

(3) We may deny you access to a record, or portion thereof, if following a review it is determined that the record or portion falls within a system of records that is exempt from disclosure according to 5 U.S.C. 552a(j) and 552a(k). See §§ 505.13 and 505.14 for a listing of general and specific exemptions.

(4) The decision to deny access to a record or a portion of the record is made by the Agency's Privacy Act Officer. The denial letter will advise you of your right to appeal the denial (See § 505.9 on Access Appeal Committee's review).

§ 505.6 Medical records.

If, in the judgment of the Agency, the release of medical information to you could have an adverse effect, the Agency will arrange an acceptable alternative to granting access of such records directly to you. This normally involves the release of the information to a doctor named by you. However, this special procedure provision does not in any way limit your absolute right to receive a complete copy of your medical record.

§ 505.7 Correction or amendment of record.

(a) You have the right to request that we amend a record pertaining to you which you believe is not accurate, relevant, timely, or complete. At the time we grant access to a record, we will furnish guidelines for you to request amendment to the record.

(b) Requests for amendments to records must be in writing and mailed or delivered to the FOIA/Privacy Act Officer, FOIA/Privacy Act Office, Office of the General Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237, who will coordinate the review of the request to amend the record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment.

(c) We will review all requests for amendments to records within 20 working days of receipt of the request and either make the changes or inform you of our refusal to do so and the reasons.

§ 505.8 Agency review of requests for changes.

(a) In reviewing a record in response to a request to amend or correct a file, we will incorporate the criteria of accuracy, relevance, timeliness, and completeness of the record in the review.

(b) If we agree with you to amend your records, we will:

(1) Advise you in writing;

(2) Correct the record accordingly;

(3) And, to the extent that an accounting of disclosure was maintained, advise all previous recipients of the record of the corrections.

(c) If we disagree with all or any portion of your request to amend a record, we will:

(1) Advise you of the reasons for the determination; and

(2) Inform you of your right to further review (see Sec. 505.9).

§ 505.9 Review of adverse agency determination.

(a) When we determine to deny a request to amend a record, or portion of the record, you may request further review by the Agency's Access Appeal Committee. The written request for review should be mailed to the Chairperson, Access Appeal Committee, FOIA/Privacy Act Office, Office of the General Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW, Washington, DC 20237. The letter should include any documentation, information or statement, which substantiates your request for review.

(b) The Agency's Access Appeal Committee will review the Agency's initial denial to amend the record and your documentation supporting amendment, within 30 working days. If additional time is required, you will be notified in writing of the reasons for the delay and the approximate date when the review is expected to be completed. Upon completion of the review, the Chairperson will notify you of the results.

(c) If the Committee upholds the Agency's denial to amend the record, the Chairperson will advise you of:

(1) The reasons for our refusal to amend the record;

(2) Your right and the procedure to add to the file a concise statement supporting your disagreement with the decision of the Agency; and

(3) Your right to seek judicial review of the Agency's refusal to amend the file.

(d) When you file a statement disagreeing with our refusal to amend a record, we will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use of, or reason to disclose the file. If information is disclosed regarding the area of dispute, we will provide a copy of your statement in the disclosure. Any statement, which may be included by the Agency regarding the dispute, will be limited to the reasons given to you for not amending the record. Copies of our statement shall be treated as part of your record, but will not be subject to amendment by you under these regulations.

§ 505.10 Disclosure to third parties.

We will not disclose any information about you to any person or another agency without your prior consent, except as provided for in the following paragraphs:

(a) Medical records. May be disclosed to a doctor or other medical practitioner, named by you, as prescribed in Sec. 505.6.

(b) Accompanying individual. When you are accompanied by any other person, we will require that you sign a statement granting consent to the disclosure of the contents of your record to that person.

(c) Designees. If a person requests another person's file, he or she must present a signed statement from the person of record that authorizes and consents to the release of the file to the designated individual.

(d) Guardians. Parents or legal guardians) of dependent minors or of an individual who has been declared by a court to be incompetent due to physical, mental or age incapacity, may act for and on behalf of the individual on whom the Agency maintains records.

(e) Other disclosures. A record may be disclosed without a request by or written consent of the individual to whom the record pertains if such disclosure conditions are authorized in accordance, with 5 U.S.C. 552a(b). These conditions are:

(1) Disclosure within the Agency. This condition is based upon a "need-to-know" concept, which recognizes that Agency personnel may require access to discharge their duties.

(2) Disclosure to the public. No consent by an individual is necessary if the record is required to be released under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The record may be exempt, however, under one of the nine exemptions of the FOIA.

(3) Disclosure for a routine use. No consent by an individual is necessary if the condition is necessary for a "routine use" as defined in Sec. 505.2(g). Information may also be released to other government agencies, that have statutory or other lawful authority to maintain such information.

(4) Disclosure to the Bureau of the Census. For purposes of planning or carrying out a census or survey or related activity. Title 13 U.S.C. Section 8 limits the uses of these records and also makes them immune from compulsory disclosure.

(5) Disclosure for statistical research and reporting. The Agency will provide the statistical information requested only after all names and personal identifiers have been deleted from the records.

(6) Disclosure to the National Archives. For the preservation of records of historical value, according to 44 U.S.C. 2103.

(7) Disclosure for law enforcement purposes. Upon receipt of a written request by another Federal agency or a state or local government describing the law enforcement purpose for which a record is required, and specifying the particular record. Blanket requests for all records pertaining to an individual are not permitted under the Privacy Act.

(8) Disclosure under emergency circumstances. For the safety or health of an individual (e.g., medical records on a patient undergoing emergency treatment).

(9) Disclosure to the Congress. For matters within the jurisdiction of any House or Senate committee or subcommittee, and/or joint committee or subcommittee, but only when requested in writing from the Chairman of the committee or subcommittee.

(10) Disclosure to the General Accounting Office (GAO). For matters within the jurisdiction of the duties of the GAO's Comptroller General.

(11) Disclosure according to court order. According to the order of a court of competent jurisdiction. This does not include a subpoena for records requested by counsel and issued by a clerk of court.

§ 505.11 Fees.

(a) The first copy of any Agency record about you will be provided free of charge. A fee of $0.15 per page will be charged for any additional copies requested by you.

(b) Checks or money orders should be made payable to the United States Treasurer and mailed to the FOIA/Privacy Act Office, Office of the General Counsel, Broadcasting Board of Governors, Suite 3349, 330 Independence Avenue, SW., Washington, DC 20237. The Agency will not accept cash.

§ 505.12 Civil remedies and criminal penalties.

(a) Grounds for court action. You will have a remedy in the Federal District Court under the following circumstances:

(1) Denial of access. You may challenge our decision to deny you access to records to which you consider yourself entitled.

(2) Refusal to amend a record. Under the conditions of 5 U.S.C. 552a(g), you may seek judicial review of the Agency's refusal to amend a record.

(3) Failure to maintain a record accurately. You may bring suit against the Agency for any alleged intentional and willful failure to maintain a record accurately, if it can be shown that you were subjected to an adverse action resulting in the denial of aright, benefit, entitlement or employment you could reasonably have been expected to be granted if the record had not been deficient.

(4) Other failures to comply with the Act. You may bring an action for any alleged failure by the Agency to comply with the requirements of the Act or failure to comply with any rule published by the Agency to implement the Act provided it can be shown that:

(i) The action was intentional or willful;

(ii) The Agency's action adversely affected you; and

(iii) The adverse action was caused by the Agency's actions.

(b) Jurisdiction and time limits.

(1) Action may be brought in the district court for the jurisdiction in which you reside or have a place of residence or business, or in which the Agency records are situated, or in the District of Columbia.

(2) The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the Agency has materially and willfully misrepresented any information requested to be disclosed and when such misrepresentation is material to the liability of the Agency. In such cases the statute of limitations is two years from the date of discovery of the misrepresentation by you.

(3) A suit may not be brought on the basis of injury, which may have occurred as a result of the Agency's disclosure of a record prior to September 27, 1975.

(c) Criminal penalties.—(1) Unauthorized disclosure. It is a criminal violation of the provisions of the Act for any officer or employee of the Agency to knowingly and willfully disclose a record in any manner to any person or agency not entitled to receive it, for failure to meet the conditions of disclosure listed in S U.S.C. 552a(b), or without the written consent or at the request of the individual to whom the record pertains. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(2) Failure to publish a public notice. It is a criminal violation of the Act to willfully maintain a system of records and not publish the prescribed public notice. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(3) Obtaining records under false pretenses. The Act makes it a criminal offense to knowingly and willfully request or gain access to a record about an individual under false pretenses. Any person found guilty of such an offense may be fined not more than $5,000.

§ 505.13 General exemptions (Subsection (j)).

(a) General exemptions are available for systems of records which are maintained by the Central Intelligence Agency (Subsection (j)(1)), or maintained by an agency which performs as its principal function any activity pertaining to the enforcement of the criminal laws (Subsection (j)(2)).

(b) The Act does not permit general one exemption of records compiled primarily for a non-criminal purpose, even though there are some quasi-criminal aspects to the investigation and even though the records are in a system of records to which the general exemption applies.

§ 505.14 Specific exemptions (Subsection (k)).

The specific exemptions focus more on the nature of the records in the system of records than on the agency. The following categories of records may be exempt from disclosure:

(a) Subsection (k)(1). Records which are specifically authorized under criteria established under an Executive Order to be kept secret in the interest of national defense or foreign policy, and which are in fact properly classified according to such Executive Order;

(b) Subsection (k)(2). Investigatory records compiled for law enforcement purposes (other than material within the scope of subsection (j)(2) as discussed in §505.13(a)). If any individual is denied any right, privilege, or benefit for which she/he would otherwise be eligible, as a result of the maintenance of such material, the material shall be provided to the individual, unless disclosure of the material would reveal the identity of a source who has been pledged confidentiality;

(c) Subsection (k)(3). Records maintained in connection with protection of the President and other VIPs accorded special protection by statute;

(d) Subsection (k)(4). Records required by statute to be maintained and used solely as statistical records.

(e) Subsection (k)(5). Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only if disclosure of the material would reveal the identity of a confidential source that furnished information to the Government.

(f) Subsection (k)(6). Testing or examination records used solely to determine individual qualifications for appointment or promotion in the Federal service when the disclosure of such would compromise the objectivity or fairness of the testing or examination process.

(g) Subsection (k)(7). Evaluation records used to determine potential for promotion in the armed services, but only if disclosure would reveal the identity of a confidential source.

§ 505.15 Exempt systems of records used.

The BBG is authorized to use exemptions (k)(1), (k)(2), (k)(4), (k)(5) and (k)(6).

[FR Doc. 02–4551 Filed 2–26–02; 8:45 am]
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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 45 and 46

[T.D. ATF–472]

RIN 1512–AC59

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule places with the "appropriate ATF officer" all ATF authorities contained in the Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States regulations and in the Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes. Consequently, this final rule removes the definitions of, and references to, officers and offices subordinate to the Director. This final rule also requires that persons file documents required by these regulations with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Concurrently with this Treasury Decision, ATF Order 1130.28 is being issued and will be made available as specified in this rule. Through this order, the Director has delegated all of the authorities to the appropriate ATF officers and specified the ATF officers with whom applications, notices, and other reports, which are not ATF forms, are filed.

EFFECTIVE DATE: This rule is effective February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202–927–8210 or e-mail to *alctob@atfhq.atf.treas.gov*).

SUPPLEMENTARY INFORMATION:

Background

Delegations of Authority

Pursuant to Treasury Orders 120–01 (formerly 221), dated June 6, 1972, and 120–02 (formerly 221–4), dated December 5, 1978, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 and chapter 114 of Title 18 of the United States Code (U.S.C.). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under such provisions, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in parts 45 and 46 that were previously delegated and places those authorities with the "appropriate ATF officer." All of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in parts 45 and 46 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends parts 45 and 46 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.28. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to 27 CFR parts 45 and 46. New §§ 45.26 and 46.20 are added to recognize the authority of the Director to delegate regulatory authorities for parts 45 and 46 and identifies ATF Order 1130.28 as the instrument reflecting such delegations. Also, §§ 45.27 and 46.21 are added to provide that an appropriate ATF officer prescribes all forms required by this part. In addition, it explains that the instructions for ATF forms identify the ATF officer with whom they must be filed. In addition in part 46, subpart B, which was previously reserved, is now entitled "Administrative Provisions".

ATF has made, or will make, similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings.

Miscellaneous Changes

We are revising the number for an ATF bond form, prescribed by subpart A of 27 CFR part 46, from 2490 to 5620.10. In addition, we are correcting the title for 27 CFR part 46 by adding a comma.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 45

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 46

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

Paragraph 1. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. The heading of part 45 is revised to read as set forth above.

Par. 3. Amend § 45.11 by:

a. Removing the definitions of "Associate Director (Compliance Operations)", "ATF officer", "Region" and "Regional Director (compliance); and

b. Adding a new definition of "Appropriate ATF officer" to read as follows:

§ 45.11 Meaning of Terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

* * * * *

§§ 45.21, 45.22 and 45.42 [Amended]

Par. 4. Remove the word "Director" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

a. The introductory text, and the fourth, sixth and seventh sentences of the undesignated paragraph of § 45.21;

b. The introductory text and the third and sixth sentences of the undesignated paragraph of § 45.22; and

c. Section 45.42.

Par. 5. Revise the second sentence of the undesignated paragraph of § 45.21 to read as follows:

§ 45.21 Alternate methods or procedures.

* * * * *

* * * Where a manufacturer desires to employ an alternate method or procedure, the manufacturer must submit a written application to the appropriate ATF officer. * * *

Par. 6. Revise the fourth sentence of the undesignated paragraph of § 45.22 to read as follows:

§ 45.22 Emergency variations from requirements.

* * * * *

* * * Where a manufacturer desires to employ such variation, the manufacturer must submit a written application to the appropriate ATF officer. * * *

§§ 45.23, 45.24 and 45.51 [Amended]

Par. 7. Add the word "appropriate" before the words "ATF officer" each place it appears in the following places:

a. The heading and text of § 45.23;

b. § 45.24; and

c. § 45.51(d).

Par. 8. Add §§ 45.26 and 45.27 to Subpart C—Administrative Provisions to read as follows:

§ 45.26 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46. ATF delegation orders, such as ATF O 1130.28, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

§ 45.27 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 9. Amend § 45.34 by removing the words "regional director (compliance) for the region in which the factory from which the articles were removed is located" and adding, in substitution, the words "appropriate ATF officer".

Par. 10. Amend § 45.36 by removing the words "regional director (compliance), for the region in which the factory from which such articles were removed is located" and adding, in substitution, the words "appropriate ATF officer".

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 11. The authority citation for part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 12. Remove the definition of "regional director (compliance)" from § 46.2.

§§ 46.5, 46.7, 46.11, 46.14, 46.15 and 46.150 [Amended]

Par. 13. Remove the words "regional director (compliance)" each place they appear and add, in substitution, the words "appropriate ATF officer" in the following places:

a. Section 46.5(c);

b. The third sentence of § 46.7;

c. Section 46.11(b);

d. Section 46.14;

e. Section 46.15; and

f. Section 46.150(b) and (c).

§§ 46.6, 46.10 and 46.14 [Amended]

Par. 14. Remove the words "Form 2490" each place they appear, and add, in substitution, the words "ATF Form 5620.10" in the following places:

a. Section 46.6(c);

b. The heading and text of § 46.10; and

c. Section 46.14.

Par. 15. Revise the first sentence of § 46.7 to read as follows:

§ 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. * * *

Par. 16. Revise § 46.13 to read as follows:

§ 46.13 Authority to approve bonds.

An appropriate ATF officer may approve all bonds required by this subpart.

Par. 17. Add Subpart B to read as follows:

Subpart B—Administrative Provisions

Sec.

46.21 Delegations of the Director.

46.22 Forms prescribed.

§ 46.21 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46. ATF delegation orders, such as ATF O 1130.28, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5950, or by accessing the ATF web site *(http://www.atf.treas.gov/)*.

§ 46.22 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms

required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 18. Amend § 46.72 by:

a. Revising the definition of "Appropriate ATF officer".

b. Removing the definitions of "Associate Director (Compliance Operations), "Region", and "Regional Director".

The revision reads as follows:

§ 46.72 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR parts 45 and 46.

* * * * *

§ 46.73 [Amended]

Par. 19. Remove the words "Regional regulatory administrators" from § 46.73 and add, in substitution, the words "An appropriate ATF officer".

Par. 20. Revise § 46.78 to read as follows:

§ 46.78 Action by appropriate ATF officer.

The appropriate ATF officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

Par. 21. Revise § 46.79 to read as follows:

§ 46.79 Supervision.

Before payment is made under this subpart in respect of the tax, or tax and duty, on tobacco products, or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products, or cigarette papers or tubes must be destroyed by suitable means under the supervision of an appropriate ATF officer who will be assigned for that purpose by another appropriate ATF officer. However, if the destruction of such tobacco products, or cigarette papers or tubes has already occurred, and if the appropriate ATF officer who acts on the claim is satisfied with the supervision of such destruction, ATF supervision will not be required.

§ 46.81 [Removed and reserved]

Par. 22. Remove and reserve § 46.81.

Par. 23. Amend § 46.143 by:

a. Adding a new definition of "Appropriate ATF officer".

b. Removing the definitions of "ATF officer" and "Regional Director (compliance).

The addition reads as follows:

§ 46.143 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

* * * * *

§ 46.150 [Amended]

Par. 24. Remove the words "of the region in which the distributor is located" from the first sentence of § 46.150(c).

§§ 46.153, 46.164, and 46.165 [Amended]

Par. 25. Add the word "appropriate" before the words "ATF officer" each place they appear in the following places:

a. The heading and text of § 46.153;

b. Section 46.164; and

b. Section 46.165.

Par. 26. Amend § 46.163 by:

a. Adding a definition of "Appropriate ATF officer".

b. Removing the definition of "ATF officer".

The addition reads as follows:

§ 46.163 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

* * * * *

Par. 27. Remove the words " ATF Order 1130.24, Delegation Order—Delegation of the Director's Authorities in Subpart C and Subpart I of 27 CFR part 46" from the definition of "appropriate ATF officer" in § 46.192(a) and add, in substitution, the words "ATF Order 1130.28, Delegation of the Director's Authorities in parts 45 and 46".

§ 46.270 [Removed and reserved]

Par. 28. Remove and reserve § 46.270.

Signed: November 13, 2001.

Bradley A. Buckles,

Director.

Timothy E. Skud,

Acting Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 02–4386 Filed 2–26–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 2115–AG04

Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring that children under age 13 aboard recreational vessels wear personal flotation devices (PFDs), or lifejackets. During 1995–1998, 105 children under 13 died in the water, 66 of them by drowning. This rule should reduce the number of children who drown because they were not wearing lifejackets.

DATES: This final rule is effective March 29, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–8589 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Carl Perry, Coast Guard, telephone: 202–267–0979. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 1, 2001, we published in the **Federal Register** [66 FR 21717] a notice of proposed rulemaking (NPRM) entitled, "Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels". We received 46 letters commenting on the proposed rule. No public hearing was requested and none was held.

The NPRM followed two published notices of request for comments, both titled "Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices," under the docket number CGD 97–059. This first appeared in the **Federal Register** on September 25, 1997 [62 FR 50280]; the second, which extended the comment period, on March 20, 1998 [63 FR 13586]. The comments received in response to these notices were discussed in the NPRM [66 FR 21717].

After summarizing the comments received in response to the NPRM, we consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding the results. NBSAC recommended that we proceed to publish a final rule, as proposed.

Background and Purpose

The number of deaths by drowning of children under 13 has decreased from 26 in 1995 to 11 in 1998. A review of statistics on recreational-boating accidents during 1998 showed that the rate of children drowning in States that require children to wear lifejackets (1.22 such drownings for every 1000 accidents) is lower than that of States that do not (1.31 such drownings for every 1000 accidents).

By late 1995, 26 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, were not consistent nationwide, affecting children of different ages, while aboard vessels of different sizes, and engaged in different activities. By late 1999, 36 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, still were not consistent nationwide. They varied by the age for wearing: from under age 18, when the vessel operator is under 18, to under age 6. They varied in other particulars, too: on the sizes of vessels (more than 26 feet in length; or less than 65 feet, 26 feet, 19 feet, 18 feet, or 16 feet in length); whether the vessels were under way, in motion, or not specified; and whether the children were on open decks, below decks, or in enclosed cabins.

To improve boating safety and encourage greater uniformity of boating laws, we are instating a requirement that children under 13 wear lifejackets approved by the Coast Guard while aboard vessels under way, except when the children are below decks or in enclosed cabins. We are nevertheless proposing to adopt the ages at or below which the States require children to wear lifejackets within those States. The existence of a Federal requirement for children to wear lifejackets under specific circumstances, even one that adopts States' thresholds of age, will encourage States to establish their own requirements for children and will draw the several requirements into greater uniformity nationwide.

Discussion of Comments and Changes

By the close of the comment period on August 30, 2001, we received 46 comments from the following categories:

11 recreational boaters;
7 governmental agencies;
3 representatives of the boating industry;
1 general business;
1 boating organization;
2 safety organizations; and

The National Transportation Safety Board (NTSB). Twenty-two comments supported the rule as proposed, eight supported it with changes, and sixteen opposed it.

Most of the comments that supported the rule as proposed stated that the rule would be a positive step toward reducing drownings and toward a uniform requirement across the States. Two comments indicated that requiring children to wear PFDs would make boating safer and more pleasant for parents because parents themselves often wear PFDs, again to influence children. Parents also know that mishaps happen quickly and that they cannot always watch children on a boat so use of PFDs increases their sense of safety. In separate comments, two agencies in North Carolina stated that that State's data on drownings indicate that most children who drowned there were not wearing PFDs at the time of the incidents.

Eight comments either suggested helpful changes or stated that they could support the rule, or at least not object to it if certain changes were made.

Two comments requested that the rule allow the use of automatic, inflatable PFDs or safety harnesses on all vessels or at least on every vessel more than 21 feet in length.

But the proposed rule did not intend to prohibit the use of inflatable PFDs for children. The Coast Guard has already approved automatic, hybrid, inflatable PFDs for children, which means these PFDs meet the requirements of this final rule. Once the Coast Guard has approved automatic, fully inflatable PFDs for children to wear, such devices will also meet these requirements. This rule also does not prohibit the use of a safety harness, but does not allow safety harnesses to substitute for wearable PFDs. The Coast Guard has decided not to revise this rule to take account of these two comments, because the rule anticipates them.

One comment suggested limiting the rule to children on boats less than 18 feet that are under way or making way, while another suggested limiting it to children on the decks of vessels more than 65 feet.

The Coast Guard has no data indicating any specific length above which children become safe even without wearing lifejackets. Therefore, we have retained the wearing requirement as proposed without any such length.

Several comments asked the Coast Guard to lower the age limit because many 12-year-olds are better swimmers than many adults. One comment suggested that the age be lowered to 6 years old when a vessel is not under way. Another comment recommended exempting those children who have passed a swimming course or a swimming-proficiency test.

In a study of Recreational Boating Safety Study from 1993, NTSB recommended that the Coast Guard work with the National Association of State Boating Law Administrators (NASBLA) and the American Academy of Pediatrics to develop "a uniform component of standards that establishes an age at or below which all children should be required by all States to wear personal flotation devices while in recreational boats." NTSB proposed this strategy instead of one that would set specific Federal age-based requirements for wearing PFDs. The Coast Guard, these two organizations, and others endorsed mandatory use of lifejackets for children 12 and under. The other organizations were the National Safety Council, NBSAC, the U.S. Coast Guard Auxiliary, the National Water Safety Congress, the National Recreational Boating Safety Coalition, the National Safe Boating Council, the National Marine Manufacturers Association, the PFD Manufacturers Association, the American Medical Association, the American Camping Association, and the National Safe Kids Campaign. At least 14 States selected the same age-based requirements for children to wear

lifejackets, either under 13 years or 12 years and under, which squares with the recent recommendations of NBSAC and NTSB.

Therefore, we have retained in this final rule the age-based requirement as proposed. The Coast Guard has decided to not preempt the States from setting their own wearing requirements different than the Federal ones.

Another comment suggested that the current wording of "appropriate PFDs" is too vague and requested that the "appropriate" be replaced with "a Type I, II, III, or V PFD."

In the preamble to the NPRM [66 FR 21717], under paragraph 2 of the discussion of the proposed rule for section 175.15, we stated that the proposed requirement would be to wear lifejackets approved by the Coast Guard. We agree with the comment and have revised this section to read, " * * * appropriate PFDs approved by the Coast Guard."

In its comment, the NTSB requested that the Coast Guard reconsider allowing States to set their own age-based requirements, even if lower than 12 years old. The NTSB urged the Coast Guard to establish a uniform standard for the mandatory use of PFDs for all children under age 13. According to NTSB, a national standard would help parents and law-enforcement agencies by minimizing confusion about which children must wear PFDs in which States. Another comment also asked that the rule preempt the different age-based requirements from State to State.

Again, the Coast Guard has decided not to preempt the States from setting their own wearing requirements different from the Federal ones.

Seven of the sixteen opposing comments stated that mandatory use of lifejackets is a State issue.

One comment expressed concern that Federal action would interfere with individual State efforts to mandate use of PFDs. It and another suggested that each State be allowed to continue drafting laws tailored to its own distinct waters and boating community. Another comment stated that the low number of children's drownings that appear in national statistics indicate that States are handling the issue properly. Two others disapproved of a Federal requirement because it would create confusion at a time when most States already require that children wear lifejackets. One of those, from the Virginia Department of Game and Inland Fisheries, stated that, because under the proposed rule States would continue to enforce existing age limits, it is "unclear how [that rule] would encourage greater uniformity of boating laws." It added that Virginia's own data on boating accidents did not support imposing the requirement on "potentially hundreds of thousands of 'recreational vessel users'."

This final rule acknowledges the law-enforcement efforts of the many States that already require children under specific ages to wear lifejackets while on board recreational vessels and, by adopting the ages for wearing lifejackets within those States, does not interfere with those efforts. It adds authority for boarding officers of the Coast Guard, enforcing Federal law, to support those efforts. Further, it encourages other States to undertake their own such efforts and yet does so without imposing a Federal mandate.

Other opposing comments stated that national statistics do not warrant a Federal rule, and one suggested that the Coast Guard focus on education rather than regulation. Another questioned whether the Coast Guard's own statistics supported the rule. It stated that some entries in the Boating Accident Reporting Database (BARD) first report deaths as due to drownings, which coroners later conclude were actually due to carbon-monoxide poison. Another responded that the data indicate that the rule would not have saved most children who drowned; and it concluded that age 12 "is certainly too old."

The Coast Guard has fostered and will continue to foster safety in recreational boating through education and public awareness. However, we disagree with the comments implying that our boarding officers should not be authorized to support States' law-enforcement officers from enforcing requirements for children to wear lifejackets within the States with such requirements. Further, the nationwide requirement for children to wear lifejackets will encourage other States to enact such requirements. Its applying "under 13" agrees with recommendations from NBSAC and the NTSB. Therefore, we have retained the age-based requirement as proposed.

Other comments objecting to the rule noted the Coast Guard's limited funds for enforcement. One stated that because most States already have a mandated age limit, generally 12, the Coast Guard would be wasting valuable man-hours handing out citations like parking tickets. It also voiced concern that the citations could lead to higher insurance costs for individual boaters. Another stated that a Federal rule would be ineffective because there would be no added funding for enforcement.

In the preamble to the NPRM, under paragraph 1 of the Regulatory Evaluation discussing the costs of the proposed rule, we stated that, "* * * the Coast Guard already trains its Boarding Officers to check safety equipment." The Coast Guard has decided that the proposed rule anticipates these comments and adopts that rule, unchanged in these respects, as final.

Three comments voiced concern that the proposed rule did not consider how uncomfortable lifejackets can be for children, especially those boating in hot, humid climates. One of the three stated that children wearing lifejackets in those climates could suffer heat stroke and argued that the rule would discriminate against children who are under 13 but who are good, even excellent, swimmers. Another added that the Coast Guard could reduce the number of drownings more effectively if it focused educational campaigns on adults who use canoes and johnboats to go fishing or bird watching. These people view boating only as a means to doing the primary activity, so they may not be as aware of boating safety as boaters with children on board.

Some models and types of lifejackets are more comfortable than others, and designs are ever-evolving. Voluntary swimming is not the same as involuntary swimming after falling overboard or after a collision. Again, the Coast Guard has fostered and will continue to foster recreational boating safety through education and public awareness, even where boating is involved but where it is not the primary activity. The Coast Guard adopts the proposed rule, unchanged in these respects, as final.

Other comments stated that the decision whether to place a child in a lifejacket should belong to the parents or guardians and that the government cannot protect people from their own poor judgment.

The final rule does not preclude parents and guardians from the exercise of good judgment, but it does prohibit the operator of the boat from getting under way until each child onboard is wearing a lifejacket. The rule is likely to have the same effect on the judgment of parents and guardians as laws that require the use of seatbelts and special seats for children in cars. Even if "government cannot protect people from their own poor judgment," it can protect some people from some others' poor judgment. The Coast Guard adopts the proposed rule, unchanged in these respects, as final.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of

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

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Rule

This rule imposes no costs on the boating public. Existing rules require the carriage of an appropriate lifejacket for each passenger. Costs to the Government are non-existent as well because the Coast Guard already trains its Boarding Officers to check safety equipment when boarding recreational vessels.

2. Benefit of Rule

This rule is appropriate because, even though statistics on boating accidents show that the actual numbers of children under 13 that drowned in recent years were relatively small (14 in 1998, 14 in 1999, and 7 in 2000), these few drownings were avoidable. The rule should reduce the number of children under 13 that drown every year because they are not wearing lifejackets.

This rule affects only those States that have not enacted requirements for children to wear lifejackets. In those States, there were 7 fatal drownings and 1 moderate and 3 critical near-drowning injuries of children under 13 from 1996 through 2000. These injuries and drownings might have been prevented if the children had worn lifejackets. (These numbers may overstate the number of lives that could have been saved if the children had worn lifejackets: Narratives in accident reports may fail to disclose circumstances in which the victims were pinned, for example, and would have drowned anyway. Yet they may also understate the number of lives that could have been saved: Many accidents go unreported entirely.)

A memorandum from the Office of the Secretary of Transportation, dated January 29, 2002, sets the benefit of averting an accidental fatality in regulatory analyses at $3.0 million. Another memorandum from that Office, dated January 8, 1993, advises agencies within the Department to classify injuries as minor, moderate, serious, severe, critical, or fatal. The latter memorandum also assigns to each degree of injury averted a certain percentage of the value of society's willingness to pay to avert a fatality. To calculate the value of society's willingness to pay to avert each degree of injury, we multiplied $3.0 million by the percentage assigned to each degree of injury averted.

If we consider a 100% rate of compliance with a requirement for children to wear lifejackets, we can calculate the retrospective benefits of this rule as below:

BENEFIT OF AVERTING ACCIDENTAL INJURIES AND FATALITIES FOR STATES WITHOUT EXISTING REGULATIONS

Severity category of injury	Benefit of averting an accidental injury or fatality	Number of injuries (1996–2000)	Benefit if accidental injuries and fatalities are averted
Minor	($3,000,000)(0.0020)= $6,000	0	($6,000)(0)= 0.
Moderate	($3,000,000)(0.0155)= $46,500	1	($46,500)(1) = $46,500.
Serious	($3,000,000)(0.0575)= $172,500	0	($172,500)(0) = 0.
Severe	($3,000,000)(0.1875)= $562,500	0	($562,500)(0) = 0.
Critical	($3,000,000)(0.7625)= $2,287,500	3	($2,287,500)(3) = $6,862,500.
Fatal	($3,000,000)(1.000)= $3,000,000	7	($3,000,000)(7) = $21,000,000.
Total		11	$27,909,000.

The total value of injuries and fatalities averted for 1996–2000 would have been $27,909,000. Therefore, the average annual value of injuries and fatalities averted would have been $5,581,800, calculated as ($27,909,000)/(5 years).

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Federal requirement for children under 13 to wear lifejackets applies to operators of recreational vessels on waters subject to the jurisdiction of the United States (as defined in 33 CFR 2.05–30). It will continue to apply to operators of recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05–1). Further, since this requirement adopts the ages at or below which States require children to wear lifejackets, operators of recreational vessels either in States with such requirements or on navigable waters of the United States outside States altogether are subject to it.

Because the Regulatory Flexibility Act does not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we have offered to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979, or by e-mail at *cperry@comdt.uscg.mil.*

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this final rule under Executive Order 13132 and have determined that, because the Federal requirement for children under 13 to wear lifejackets will not supersede or preempt any State's comparable requirement, this rule does not have implications for federalism under that Order. The Federal requirement applies only in States without comparable requirements.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government, or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule does not impose an unfunded mandate.

Taking of Private Property

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

Reform of Civil Justice

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

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule. Nor does it create an environmental risk to health or risk to safety that may disproportionately affect children; on the contrary, it advances the welfare of children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The rule requires that certain children aboard recreational vessels wear lifejackets. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 175

Marine Safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 175 as follows:

1. The citation of authority for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Amend § 175.3 by adding the following definition in alphabetical order to read as follows:

§ 175.3 Definitions

* * * * *

State means a State or Territory of the United States of America, whether a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

* * * * *

3. Amend § 175.15 by removing from paragraph (b) the term "PFD's" and adding in its place the term "PFDs," and by adding a new paragraph (c), to read as follows:

§ 175.15 Personal flotation devices required.

* * * * *

(c) No person may use a recreational vessel unless each child under 13 years old aboard is wearing an appropriate PFD approved by the Coast Guard; or

(1) Each child not wearing such a PFD is below decks or in an enclosed cabin; or

(2) The vessel is not under way.

4. Add a new § 175.25 to subpart B, to read as follows:

§ 175.25 Adoption of States' requirements for children to wear personal flotation devices.

(a) This section applies to every operator of a recreational vessel on waters within the geographical boundaries of any State that has established by statute a requirement under which children must wear PFDs approved by the Coast Guard while aboard recreational vessels.

(b) If the applicable State's statute establishes an age under which children must wear PFDs, that age, instead of the age provided in § 175.15(c) of this part, applies within the geographical boundaries of that State.

Dated: February 15, 2002.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 02–4633 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make compliance with applicable Great Lakes shipping industry codes for

ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System.

The 2002 Seaway navigation season is scheduled to open on March 26. These amendments will be in effect in Canada on that date. For consistency, because these are joint regulations under international agreement and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective on that date, March 26, 2002.

DATES: This rule is effective on March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. A Notice of Proposed Rulemaking was published on January 24, 2002 (67 FR 3465). Interested parties have been afforded an opportunity to participate in the making of the amendments applicable in the United States. No comments were received. The amendments are described in the following summary.

Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System. This requirement will go into effect beginning in the 2002 navigation season. This is in addition to the existing U.S. and Canadian legal ballast water requirements as well as the tremendous amount of undertakings at the international, national, and regional levels by government and the private sector regarding control of ANS. This rule is one more effort in the commitment of many to find a cost-effective solution that protects the Great Lakes Seaway System from ANS while facilitating commerce. Specifically, the SLSDC, along with the SLSMC, is amending the Seaway Regulations and Rules in Part 401 of title 33 of the Code of Federal Regulations by adding a new subsection (d) to § 401.30, "Adequate ballast and proper trim," which section is retitled "Ballast water and trim." This new subsection requires that, to obtain clearance to transit the Seaway, every vessel entering the Seaway must agree to comply with the applicable, existing industry ballast water management practices while operating anywhere within the Great Lakes and the Seaway. This involves two types of vessels and two codes of practice respectively. Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000. That code reads as follows:

Recognizing that discharge of ballast water from ships is viewed as a principle vector for the introduction and spread of harmful aquatic organisms and pathogens,

Recognizing the role shipowners and vessel operators can play in minimizing the introduction and spread of non-indigenous organisms and protecting the Great Lakes waters,

Considering the current status of technology for the treatment of ballast water and the need to develop standards against which to measure efficiency of management procedures;

Vessels entering into the Great Lakes commit to the following Code of best Practices For Ballast Water Management.

1. To conduct ballast water management whenever practical and at every opportunity even if the vessel is not bound for a port where such a procedure may be required. This process will ensure that residual ballast on board will, to the greatest extent possible, be subjected to these practices. This process will also aid to minimize sediment accumulations in ballast tanks, and where mid-ocean exchange is practiced, subject fresh-water organisms to an extended exposure to salt water.

Where mid-ocean ballast water exchange is the, or one of the management practices used as required by IMO, USCG, Canadian or other regulations, the safety of the ship shall be a top priority and management shall be practiced according to recognized safe practices.

2. to regular inspection of ballast tanks and removal of sediment, if necessary, to at least the level comparable to that required by the vessel's Classification Society in order to conduct a "close-up" Enhanced Survey, Ballast Tank Structural and Coating Inspection.

3. to ballast water exchange procedures as provided for in US legislation and approved and enforced through United States Coast Guard Regulations.

4. to record keeping and reporting according to United States Coast Guard Regulations (ballast water report forms)—the master to record all uptake and discharge of ballast water in an appropriate log book; Ballast Water Report Forms to be completed and submitted as per Regulations; inspection and cleaning of ballast tanks to be recorded and records to be made available to inspectors upon request.

5. to provide information and logs to authorized inspectors and regulators for the purposes of verifying the vessel's compliance with this Code of Best Practices.

6. to apply a precautionary approach in the uptake of ballast water by minimizing ballasting operations under the following conditions:

a. In areas identified in connection with toxic algal blooms, outbreaks of known populations of harmful aquatic organisms and pathogens, sewage outfalls and dredging activity.

b. In darkness, when bottom dwelling organisms may rise in the water column.

c. In very shallow water.

d. Where a ship's propellers may stir up sediment.

e. In areas with naturally high levels of suspended sediments, e.g. river mouths, and delta areas, or in locations that have been affected significantly by soil erosion from inland drainage.

f. In areas where harmful aquatic organisms or pathogens are known to occur.

7. to the disposal of accumulated sediments as provided for in the existing IMO Ballast Water Protocols during ocean passages outside International Ballast Water Management Areas or as otherwise approved by Port State Authorities.

8. to foster and support scientific research sampling programs and analysis—Facilitate access to on board sampling and testing of ballast water and sediment including opening of ballast tank covers and safe access to ballast tanks following safety procedures for entering enclosed spaces. Sampling, testing and inspection to be planned and coordinated to fit within vessels' operational programs and minimize any delays.

9. to cooperate and participate in standards development and treatment systems testing and approval processes, including, but not limited to mechanical management and treatment systems, and pesticide management systems as well as improved techniques for ballast water exchange and their scientific assessment.

10. to strive toward global, integrated ballast water management strategies in conformity with internationally agreed principles that respect national and regional aquatic ecosystems.

This Code of Best Practices is endorsed by the undersigned and represents our common goal to attain the highest standards of safe ballast water management to minimize the introduction and spread of aquatic nuisance species in the Great Lakes.

These Federation practices already cover approximately 95% of the commercial oceangoing vessels using the Seaway.

Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001. That code reads as follows:

Owners and operators of vessels that trade within the Great Lakes and the St. Lawrence Waterway and do not go out beyond the Exclusive Economic Zone (EEZ) recognize their role in reducing the risk of transfer of Aquatic Nuisance Species. Introduction of Aquatic Nuisance Species into the Great Lakes has taken place by ships operating outside the EEZ and has caused ecosystem and economic damage. The co-sponsors of this voluntary plan will take management action to reduce the risk of transferring these species. This plan will apply to U.S and Canadian vessels that operate entirely within the Great Lakes and St. Lawrence Waterway. Design, construction, and structural criteria on some vessels may require consideration and variance from this management practice; however, efforts will be made to comply wherever possible.

For All Vessels Operating Totally Within the Great Lakes and St. Lawrence Waterway System.

None of these practices will be undertaken if the master feels the safety of crew or ship will be compromised

1. Vessel operators will assist in developing programs such as the Duluth-Superior Harbor and Alpena, Michigan Ruffe Voluntary Ballast Management Programs should U.S. Fish and Wildlife Service or an equivalent Canadian authority determine a nuisance species has established niche communities in a specific harbor, providing that these programs will result in substantial prevention of the spread of the species or harmful organism via ballast water.

2. Each vessel will perform annual inspections to assess sediment accumulations. Removal of sediment, if necessary, will be carried out. Records of these actions will be kept onboard the ship.

3. Each company will develop sediment removal policies and plans.

4. When practical and safe, vessels will take only the minimum amount of ballast required to safely depart the dock and will complete ballasting in deeper water. Records of all ballasting operations will be kept onboard the ship.

5. Cooperation will be provided, as mutually agreed upon, for scientific research into sampling and analysis programs that will not interfere with normal and safe ship operations.

6. Cooperation will be provided, as mutually agreed upon, for developing and testing ballast water treatment systems.

7. Cooperation will be provided toward harmonization of regional ballast water practices.

These rules already cover nearly 100% of the commercial non-oceangoing vessels (lakers) using the Seaway. The texts of both of these codes will be printed in the "Seaway Handbook," which is distributed to Seaway users by the SLSMC and the SLSDC and is also posted on the joint "Great Lakes St. Lawrence Seaway System Web" site, which can be found at *http://www.greatlakes-seaway.com/en/pdf/handbook.pdf*. The SLSDC and the SLSMC will assess the effectiveness of this regulation after the 2002 Seaway navigation season.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment. The environmental considerations applicable to the basic substance of this regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, "Implementation of the National Invasive Species Act of 1996" rulemaking (64 FR 26672).

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that the rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 continues to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. § 401.30 is amended by revising the heading and by adding a new paragraph (d) to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(d) Beginning in the 2002 navigation season, to obtain clearance to transit the Seaway:

(1) Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000, while operating anywhere within the Great Lakes and the Seaway; and

(2) Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway.

Issued at Washington, DC, on February 25, 2002.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 02–4745 Filed 2–26–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Changes to Seasons and Harvest Limits for Goat in Unit 5(A) and Moose in Unit 22(B)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Temporary closure of season, temporary change in season and harvest quota, and temporary establishment of harvest priority.

SUMMARY: This provides notice of the Federal Subsistence Board's temporary closure to protect mountain goat populations in a portion of Unit 5(A) and changes in harvest season and quota and the establishment of a harvest priority to protect moose populations in Unit 22(B) West of the Darby Mountains. These regulatory adjustments and the closure provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 25, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2001–2002 regulatory year.

DATES: The original emergency action for goats was effective October 17 through December 15, 2001. The extension of the emergency action (temporary closure) is effective December 16, 2001, through January 31, 2002. The temporary season establishment and harvest priority for moose in Unit 22(B) west of the Darby Mountains is effective January 1–31, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001–2002 wildlife seasons, harvest limits, and methods and means were published on June 25, 2001 (66 FR 33744). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages the general harvest and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

The temporary changes for early closure of seasons are necessary to protect declining goat populations in the Yakutat area, and the establishment of a limited winter moose season on a portion of the Seward Peninsula is needed to provide harvest opportunity for those rural residents that have customary and direct dependence on the resource, while helping the declining moose populations recover. This temporary change is authorized by and in accordance with 50 CFR 100.19(e) and 36 CFR 242.19(e).

Unit 5(A) Goats

Goat harvest in the area of Unit 5(A), which drains into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers, has increased significantly over the past 3 years. A harvest of 10 goats was recorded in 1998, a high of 16 were taken in 1999, and 8 goats were taken in 2000. Previous to these 3 years the reported goat harvest for this area has averaged 2.2 goats per year. Recent aerial survey information from 2000 and 2001 indicates a declining trend in the goat population in this area. The decline is possibly the result of an over harvest of mature females, affecting population recruitment.

A conservation concern, for this area, was first recognized in early December 2000 when the harvest exceeded 5% of the estimated population. Both the State of Alaska and the Federal Subsistence Board responded to the situation by closing the goat harvest seasons for the area of Unit 5(A) draining into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers.

Following the 2001 aerial survey of the population, the Alaska Department of Fish and Game, through Emergency Order No. 01–03–01, closed the goat season in the areas of Unit 5(A) between Hubbard and West Nunatak Glaciers, on October 12, 2001. On October 16, 2001, the Federal Subsistence Board adopted a special action request submitted by the Tongass National Forest to similarly close the Federal harvest season. This emergency action, effective for 60 days

(October 17, 2001–December 15, 2001) closed the area draining into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers to the taking of goats. The harvest season for the remainder of Unit 5(A) continued to have a harvest limit of 1 goat by Federal registration permit with the season from August 1–January 31.

On November 8, 2001, a public meeting was held in Yakutat, Alaska on behalf of the Federal Subsistence Board to obtain public comments on a possible extension of the existing emergency action through the remainder of the regulatory season. Public testimony at the meeting was unanimous in favor of extending the closure through the remainder of the regulatory season.

On November 30, 2001, the Forest Service biologists conducted another aerial survey of the subject goat population, the results of which indicated a continuing decline in the goat population.

On December 11, 2001, the Federal Subsistence Board, recognizing that a conservation concern still exists, approved the temporary action to continue the closure, through the remainder of the regulatory season. This regulatory action was intended to aid in the population recovery of the goat population in Unit 5(A).

Unit 22(B) Moose—West of the Darby Mountains

Moose populations in Unit 22(B) west of the Darby Mountains have declined in recent years, along with moose populations throughout the management unit. Overall populations in Unit 22 ranged from 7,000 to 10,000 during the late 1980's to recent estimates of 5,000 to 7,000 animals. The declines are thought to be a result of winter mortality and lower calf survival, resulting in a population recruitment that has been below the annual harvest. Recruitment in 2000 for Unit 22(B) west of the Darby Mountains was estimated at only 48 moose, with a harvest of approximately 68 moose. The Federal subsistence moose harvest in Unit 22(B) was restricted to bulls by the Federal Subsistence Board in the fall of 2000 due to this declining local moose population and heavy hunting pressure.

On July 13, 2001, the Alaska Department of Fish and Game using their emergency authority, shortened, but did not close, moose hunting seasons in four portions of Unit 22, including Unit 22(B) west of the Darby Mountains. The State's justification for this action was that moose populations in the area cannot sustain recent harvest levels, and that recent surveys indicated moose densities, recruitment rates, and bull:cow ratios are low and declining.

On July 31, 2001, the Federal Subsistence Board approved emergency action (effective for 60 days) to make similar adjustments in the Federal Subsistence Harvest Regulations. In addition, these areas of concern were closed to the taking of moose except by Federally-qualified subsistence users, as recommended by the Seward Peninsula Subsistence Regional Advisory Council. The specific changes for Unit 22(B) west of the Darby Mountains was to close the harvest season on September 14, and to close Federal public lands to the taking of moose except by Federally-qualified subsistence users.

On Sepfember 26, 2001, a public meeting was held in Nome, Alaska, to obtain public comments on a request from the Seward Peninsula Regional Advisory Council to continue the existing emergency action through the remainder of the regulatory season. The Regional Council also requested that Federal public lands in Unit 22(B) west of the Darby Mountains be closed to the taking of moose except by residents of Unit 22(B), and that a harvest quota be established for a winter hunt to take place January 1–31, 2002.

On September 27, 2001, the Federal Subsistence Board approved temporary action to reduce the length of the harvest season in most Unit 22 subunits, as requested by the Seward Peninsula Regional Advisory Council. The resulting action for Unit 22(B) west of the Darby Mountains, however, was to identify a—"No Federal open season." The Federal Subsistence Board expressed its intention to consider additional action prior to January 2002, to provide for a winter harvest season in Unit 22(B) west of the Darby Mountains, following an analysis of the Council's proposal to restrict the taking of moose to only residents of the subunit.

On November 16, 2001 the Federal Subsistence Board adopted temporary action to open a winter harvest season (January 1–31, 2002) for moose in Unit 22(B) west of the Darby Mountains with a harvest quota of 6 bulls. The harvest will be implemented through the use of Federal registration permits, and Federal public lands will be closed to the taking of moose except by residents of Unit 22(B) west of the Darby Mountains (residents of White Mountain and Golovin). The Board's decision was based upon the application of the criteria set forth in Section 804 of ANILCA. The analysis concluded that good documentation exists that indicates the rural residents of Unit 22(B) are and historically have been the primary users of the moose in Unit 22(B). Specifically, the residents of White Mountain and Golovin are the primary users of moose in Unit 22(B) west of the Darby Mountains. These rural residents also live closest to the resource in question. In the winter, the residents of White Mountain and Golovin rely almost exclusively on the moose in Unit 22(B) west of the Darby Mountains. It is extremely difficult and hazardous for them to travel elsewhere in winter for this important primary resource. The Federal Subsistence Board recognized that the residents of Nome hunt a considerable number of moose in Unit 22(B); however, they also hunt moose in a wide variety of other areas and their primary moose hunting during the winter season takes place in Unit 22(D). Therefore, a restriction that applies to the winter hunt should have little or no effect on Nome residents, as Nome resident use of Unit 22(B) west of the Darby Mountains is primarily in the fall. The Board also recognized that many Nome residents are involved in the cash economy and have access to a wide variety of other resources.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency actions are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing

regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

Paperwork Reduction Act—This notice contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires July 31, 2003. Federal agencies 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.

Currently, information in the Subsistence Management Program is being collected by the use of a Federal Subsistence Registration Permit and Designated Harvester Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base.

Form	Estimated number of respondents	Completion time for each form (hours)	Estimated annual response	Estimated annual burden (hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	5,000	¼	5,000	1,250	$20.00	$5.00 each or $25,000 total.
Designated Harvester Application	2,000	¼	2,000	500	20.00	$5.00 each or $10,000 total.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503. Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Other Requirements

These temporary changes have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as gun and ammunition dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the temporary changes will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the temporary changes have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the temporary changes will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

These actions are not significant regulatory actions under Executive Order 12866, nor will they raise novel legal or policy issues.

The Secretaries have determined that the temporary changes meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the temporary changes do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Daniel LaPlant drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: January 15, 2002.

Timothy R. Jennings,

Acting Chair, Federal Subsistence Board.

Dated: January 15, 2002.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 02–4539 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Action—Klawock River and Lake

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency action.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management action to protect coho salmon escapement in the Klawock River and Lake. This regulatory adjustment provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: This closure is effective November 2, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provides for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts, A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

This emergency action was necessary because of predictions of low returns of coho salmon in the Klawock River and Lake. This emergency action is authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Klawock River and Lake

To date, the total return has been 4,381 coho salmon. This represents approximately 75% of the escapement objective of 6,000 coho salmon. Coho salmon are still entering the system and have been seen in the system as late as February. Fishing pressure at this time is low. Along with an Emergency Order issued by the Alaska Department of Fish and Game closing sport fishing, reducing the daily harvest coho salmon while conserving stocks needed to reach spawning escapement goals.

On November 2, 2001, the Federal Subsistence Board, acting through the delegated field official, initiated a coho salmon action reducing the daily harvest limit to two fish in the Klawock River and Lake for the period from November 2, 2001, through December 31, 2001. This action was necessary due to low coho salmon returns.

This regulatory action was necessary to assure the continued viability of the coho salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity.

The Board finds that additional public notice and comment requirements

under the Administrative Procedure Act (APA) for this emergency closure are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d) to make this effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part oft he FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The emergency closure does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The emergency closure has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small business, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the emergency closure will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency closure has no potential takings of private property implications as defined by Executive Order 12630.

The Servicer has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.* that the emergency closure will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency closure meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency closure does not have sufficient federalism implications to warrant the preparation of Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment effects with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs, and Ken Thompson, USDA–Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551 668dd, 3103–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 16, 2001.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: November 16, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 02–4538 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–M and 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 250–0317c; FRL–7146–1]

Interim Final Determination That the State of California Has Corrected Deficiencies and Stay of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving the State of California's submittal of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the State Implementation Plan (SIP). We have also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on our direct final action, we will withdraw our direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, we are making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on August 25, 2000 (65 FR 45912). This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment. If no comments are received on our approval of the State's submittal and on our interim final determination, the direct final action published in today's **Federal Register** will also finalize our determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on our approval or on this interim final determination, we will publish a final rule taking into consideration any comments received.

DATES: This document is effective February 27, 2002. Comments must be received by March 29, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On April 5, 1991, the State of California submitted a revision to Rule 4103 in the SJVUAPCD portion of the SIP, which we disapproved in part on July 25, 2000 (65 FR 45912). Our disapproval action started an 18-month clock beginning on August 25, 2000 for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised Rule 4103 and new Rule 4106 on October 30, 2001. We have taken direct final action on this submittal pursuant to our modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules and Regulations section of today's **Federal Register**, we have issued a direct final full approval of the State of California's submittal of its SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the State's submittal. Based on the proposed full approval set forth in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on August 25, 2000. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. 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. This action merely stays and defers federal sanctions. 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 only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 27, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4525 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 250–0317a; FRL–7145–8]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of particulate matter (PM–10) from open burning, prescribed burning, and hazard reduction burning. We are approving local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 29, 2002 without further notice, unless EPA receives adverse comments by March 29, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4103	Open Burning	06/21/01	10/30/01
SJVUAPCD	4106	Prescribed Burning and Hazard Reduction Burning	06/21/01	10/30/01

On January 18, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved into the SIP on July 26, 2000 (65 FR 45912) a version of Rule 4103, adopted on December 16, 1993. Rule 4106 is a new rule.

C. What Is the Purpose of the Submitted Rule Revisions?

The purpose of the submitted revised Rules 4103 and 4106 are to remedy the deficiencies cited in the limited approval of Rule 4103 on July 26, 2000 (65 FR 45912).

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(b) of the CAA requires serious nonattainment areas with significant PM–10 sources to adopt best available control measures (BACM), including best available control technology (BACT). SJVUAPCD is a serious PM–10 nonattainment area and must meet the requirements of BACM/BACT. BACM/BACT is not required for source categories that are not significant (*de minimus*) and there are no major sources. See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994).

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR Part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* (EPA–450/2–92–003).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling BACM/BACT. All of the deficiencies identified in our previous limited approval and limited disapproval action on Rule 4103 have been adequately addressed as follows:

- (Burning to prevent an imminent fire hazard that cannot be abated by other means should be done on a permissive-burn day.) The exemption from all provisions of Rule 4103 for an imminent fire hazard that cannot be abated by other means is still included in the rule and could allow burning on a no-burn day. 4103.4.1.2. There is no exemption for hazard reduction burning, which is allowed only on a permissive-burn day. 4106.5.1.4. We concur with the District's argument that burning allowed in the case of an imminent fire hazard could remedy a dangerous fire hazard instead of waiting for a permissive-burn day and is an appropriate measure. Hazard reduction burning is a less imminent form of hazard, and it is appropriate to require such burning on a permissive-burn day. The exemption for an imminent fire hazard fulfills the requirements of BACM.
- (Burning training should be done on permissive-burn days or should be limited to a short time or small amount of fuel.) The District has argued that it is very difficult to schedule personnel in advance from different locations in a large District of eight counties for training that coincides with a permissive-burn day, which often does not occur for many consecutive days. We concur that the exemption from the rule for fire-fighting training, which could allow burning on no-burn days, is reasonable. However, the exemption was restricted to require written authorization from the Air Pollution Control Officer (APCO) for all necessary fire-fighting training activities and to require that a burn plan be submitted and receive prior approval from the APCO for any fire-fighting training activities not located at a stationary fire-training facility. 4103.4.2.1 and 4103.6.2.1. This restricted exemption for burning training fulfills the requirements of BACM.
- (The addition of the exemption to burn on no-burn days for disease and pest prevention, where there is no reasonable alternative, is a SIP relaxation.) The District argued that Rules 4103 and 4106 are more stringent overall than the SIP rule given a limited approval/limited disapproval, therefore this minor and unpredictable relaxation does not violate section 110(l) of the CAA. We concur with the District's argument that this exemption, which could allow burning on no-burn days, is a necessary and appropriate measure for timely control of unplanned natural infestations where there is no reasonable alternative. This exemption is restricted to require that such burning only be done after written authorization from the APCO. 4103.4.2. This restricted exemption for disease and pest prevention fulfills the requirements of BACM.
- (Empty pesticide sacks should be burned on permissive-burn days unless the source category is *de minimums.*) The exemption to burn on no-burn days was expanded to include toxic substances other than pesticides but to not include fertilizer sacks. 4103.4.3.1. The District showed that this source category is almost *de minimums,* since it accounts for only 1.4% of the total PM–10 emissions. They argue that it is less hazardous to burn empty pesticide and hazardous material sacks in the field where emptied than to transport and store them while waiting to burn on a permissive-burn day. Furthermore, such burning is still restricted by permit requirements and subject to the tonnage allocation by the APCO to prevent an exceedance of the National Ambient Air Quality Standards (NAAQS) even on a no-burn day. This restricted exemption for empty pesticide and toxic material sacks fulfills the requirements of BACM.
- (Tumbleweeds should be burned with a permit on a permissive-burn day.) This is implemented. 4103.5.8.
- (Range improvement burning (a type of prescribed burning) from January 1 to May 31 should occur on a permissive-burn day.) This is implemented. 4106.4.9.5.
- (Agricultural burning (a type of prescribed burning) for growing crops or raising fowl or animals above 3,000 feet elevation should occur on a permissive-

burn day.) This is implemented. 4106.4.9.5.

• (Agricultural burning above 6,000 feet elevation should occur on permissive-burn days.) This is implemented. 4106.4.9.5.

• (Excessive Director's discretion in granting permission for agricultural burning on no-burn days in the event of imminent and substantial economic loss should be restricted by allowing only the acreage to be burned as limited by meteorological conditions and meeting the NAAQS.) Director's discretion for the exemption to burn in the case of imminent and substantial economic loss, which could occur on no-burn days, is restricted by limiting burning acreage to 200 acres per county per day, by requiring a forecast by the District that the NAAQS will be not be violated in downwind metropolitan areas, and by requiring that burning not be prohibited by a fire agency for safety reasons. 4103.4.3.3. This restricted exemption for imminent and substantial economic loss fulfills the requirements of enforceability and BACM.

• (BACM may require an overall approach of approving burns based on an evaluation of the airshed's capacity to disperse emissions on permissive-burn days so that cumulative emissions from all burns and PM–10 sources will not cause a violation of the NAAQS.) The District is required to allocate burning based on predicted meteorological conditions and whether the total tonnage to be emitted would allow the volume of smoke and other contaminants to impact smoke sensitive areas or create or contribute to an exceedance of the NAAQS. 4103.5.2 and 4106.4.2. This measure for an overall approach to allocation of burning fulfills the requirements of BACM.

• (BACM may require burner training.) Burner training in a course approved by the APCO is required for prescribed burns over 10 acres. 4106.4.9.1. This measure for burner training fulfills the requirements of BACM.

• (BACM may require the use of the best emission reduction efforts for prescribed burning and describing them in a smoke management plan.) The use of various best management practices is required. 4106.4.9. Extensive requirements for smoke management plans are described. 4106.5.2. These measures for best emission reduction efforts fulfill the requirements of BACM.

• (BACM may include second level smoke evaluation, which analyzes whether existing fires should be extinguished.) A land manager must coordinate daily with the District or CARB for multi-day burns to affirm that the burn project remains within the conditions specified in the smoke management plan. 4106.4.9.2. Surveillance and contingency plans are required for burns over 100 acres for actions to be taken if smoke impacts occur in smoke-sensitive areas. 4106.5.2.3. A related issue is whether to allow a naturally-ignited fire to continue in order to achieve a resource benefit. Requirements regulating this issue are provided. 4106.5.3. This measure fulfills the requirements of BACM.

An exemption was added that could allow burning paper raisin trays on no-burn days. 4103.4.3.2. The District showed that this source category is *de minimus*, since it accounts for only 0.32% of the PM–10 emissions during the two-month burning periods in each of years 1997–1999. This exemption for paper raisin trays is not required to fulfill the requirements of BACM. Rules 4103 and 4106 are more stringent overall, therefore section 110(l) of the CAA is not violated.

An exemption was added that could allow burning of confiscated contraband on no-burn days. The District argues that this PM–10 source is *de minimus*. Furthermore, the relevant law enforcement agency must submit a burn plan 15 days in advance to the APCO for approval. 4103.6.2.2. Also import of contraband from outside the District for burning is prohibited. 4103.5.7.1. This exemption for confiscated contraband is not required to fulfill the requirements of BACM. Rules 4103 and 4106 are more stringent overall, therefore section 110(l) of the CAA is not violated.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 29, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 29, 2002. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Was This Rule Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. 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 32111, "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 (Public Law 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). This action 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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(288) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(288) New and amended regulations for the following APCDs were submitted on October 30, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 4103 and 4106, adopted on June 21, 2001.

* * * * *

[FR Doc. 02–4526 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD121–3082a; FRL–7144–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland Nitrogen Oxide Averaging Plan for Constellation Power Source Generation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). This SIP revision consists of a Consent Order to Constellation Power Source Generation, Inc. for an inter-facility averaging plan for emissions of nitrogen oxides (NO_X) at facilities located in Maryland and owned by Constellation Power. The SIP revision allows Constellation Power to use system-wide emissions averaging to comply with the applicable NO_X reasonably available control technology (RACT) limits for 10 boiler units located at five electric generating facilities owned by Constellation Power. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 29, 2002 without further notice, unless EPA receives adverse written comment by March 29, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air

Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: David L. Arnold, (215) 814–2172 or by e-mail at *arnold.david@epa.gov*. Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 182(b)(2) and 182(f) of the Clean Air Act require major sources in ozone nonattainment areas to implement RACT for the control of NO_X. Maryland regulation, COMAR 26.11.09.08, establishes RACT level NO_X emission limits for specific types of boilers and other fuel burning equipment. EPA approved Maryland's NO_X RACT regulation as a SIP revision on February 8, 2001. Section (B)(3) of COMAR 26.11.09.08 allows sources to apply for an alternative emission standard from those specified in the regulation. Section (B)(4) of COMAR 26.11.09.08 allows sources that own and operate two or more affected units to achieve compliance through system-wide emissions averaging provided that total system-wide NO_X emissions would be less than the total emissions achieved through compliance with the applicable unit specific emission standards. Section (B)(4) of COMAR 26.11.09.08 also requires that such an emissions averaging plan be submitted to and approved by EPA as a SIP revision. On April 25, 2001, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a Consent Order issued by the Maryland Department of Environment (MDE) to Constellation Power Source Generation, Inc. for an inter-facility averaging plan for NO_X emissions at five electric generating facilities. The SIP revision allows Constellation Power to use system-wide emissions averaging to comply with the applicable NO_X reasonably available control technology (RACT) limits for 10 boiler units located at the five facilities.

II. Summary of SIP Revision

The Consent Order issued by the MDE to Constellation Power Source Generation, Inc. establishes an averaging plan at five electric generating plants as a means of compliance with the NO_X RACT requirements. The Consent Order was signed and dated April 16, 2001 and does not expire. The Consent Order applies to the following electric generating installations units owned by Constellation Power in Maryland: Brandon Shores units 1 and 2; Gould Street unit 3; H.A. Wagner units 1, 2, 3 and 4; C. P. Crane units 1 and 2; and Riverside unit 4. Other units located at these installations are not part of the averaging plan and remain subject to unit specific emission limits established in COMAR 26.11.09.08. Constellation Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors, and to submit quarterly reports of exceedances to both MDE and EPA. Constellation Power agrees that if it fails to comply with the averaging plan, all sources remain subject to the unit specific emission limits of COMAR 26.11.09.08. The aggregate mass emissions from all units, under the averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NO_X RACT emissions limit. Constellation Power must certify annually that the NO_X mass emissions for all ten units are at least five percent less than otherwise allowed by the applicable NO_X RACT emission limits. Other provisions in the Consent Order require Constellation Power to notify the MDE and revise the averaging plan if Constellation Power acquires new or additional electric generating units. This provision does not exempt any new or modified units from applicable New Source Review requirements. The Consent Order also contains provisions for transfer of ownership, Title V permits and severability. This Consent Order for NO_X RACT averaging does not relieve Constellation Power from the Consent Decree dated November 11, 1999 for compliance with Maryland's NO_X Budget Rule (COMAR 26.11.27 and 26.11.28).

III. EPA Evaluation of the SIP Revision

Emissions averaging programs are a common form of Economic Incentive Program (EIP). Emissions averaging EIPs provide a source or group of sources flexibility in complying with a rate-based regulatory limit by averaging the rate of pollution one source emits with another source. Averaging enables a source emitting above its allowable emission rate limit to comply with that rate limit by averaging its emissions with a another source(s) emitting below that second source's regulatory limit. Emissions averaging EIPs involve emission units at one or more facilities within the same state. EPA issued guidance to the states in developing EIPs in January 2001, "Improving Air Quality with Economic Incentive Programs", EPA–452/R–01–001. Maryland's SIP revision for Constellation Power Source Generation's NO_X emission averaging plan meets all the applicable requirements and EPA guidance for RACT and EIPs. It also includes appropriate provisions for assuring compliance and enforceability. A more detailed description of EPA's evaluation of the Constellation Power emissions averaging EIP can be found in the technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IV. Final Action

EPA is approving Maryland's April 25, 2001 SIP revision which consists of the Consent Order dated April 16, 2001 between MDE and Constellation Power Source Generation, Inc. establishing a system-wide averaging plan to comply with NO_X RACT requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 29, 2002 without further notice unless EPA receives adverse comment by March 29, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. General 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 (Public Law 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). This action 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.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named facilities.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Consent Order for Constellation Power Source Generation, Inc. must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 7, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 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 V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(168) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(168) SIP revision submitted on April 25, 2001 by the State of Maryland consisting of a Consent Order dated April 16, 2001 between the Maryland Department of the Environment and Constellation Power Source Generation Inc. The Consent Order establishes a system-wide inter-facility emissions averaging plan to comply with NO_X RACT requirements at five facilities owned by Constellation Power Source Generation Inc. and located in the State of Maryland.

(i) Incorporation by reference.

(A) Letter of April 25, 2001 from the Maryland Department of the Environment (MDE) transmitting a Consent Order issued by MDE to Constellation Power Source Generation, Inc. establishing an averaging plan at five electric generating plants as a means of compliance with the NO_X RACT requirements.

(B) Consent Order between the Maryland Department of the Environment and Constellation Power Source Generation, Inc. dated April 16, 2001.

(C) NO_X RACT Averaging Plan Proposal submitted by Constellation Power Source Generation, Inc. dated November 6, 2000.

(ii) Additional Material.—Remainder of the state submittal pertaining to the revision listed in paragraph (c)(168) of this section.

[FR Doc. 02–4523 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7149–9]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing Delaware's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Delaware's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on April 29, 2002, unless EPA receives adverse written comment by March 29, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5454. We must receive your comments by March 29, 2002. You can view and copy Delaware's application from 8 a.m. to 4:30 p.m. at the following addresses: Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89 Kings Highway, Dover, DE 19901, Phone number 302–739–3689, attn: Karen J'Anthony, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Delaware Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Delaware has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Delaware, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Delaware subject to RCRA will now have to comply with the authorized Delaware regulatory revisions instead of the equivalent revised Federal requirements in order to comply with RCRA. Delaware has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements and suspend or revoke permits, and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize Delaware's program changes. If EPA receives comments which oppose this authorization, or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of Delaware's program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to Delaware's hazardous waste program, we may withdraw that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Delaware Previously Been Authorized for?

Delaware initially received Final authorization on June 8, 1984, effective June 22, 1984 (53 FR 23837), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); and July 12, 2000, effective September 11, 2000 (65 FR 42871).

Please note that in the aforementioned authorization action effective September 11, 2000, Checklist 152 was listed in the program revision summarization table. This checklist includes certain import/export provisions for which States cannot receive authorization. While Delaware adopted the provisions listed in Checklist 152, the revisions listed in 40 CFR 262, subparts E and H will be administered by EPA.

G. What Changes Are We Authorizing With Today's Action?

On January 11, 2002, Delaware submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Delaware Final authorization for the program changes referenced in its program revision application, which include State regulatory changes that are analogous to various amendments to 40 CFR parts 124, 260 through 266, 268, 270, 273 and 279 that were published in the **Federal Register** between November 30, 1998 and June 8, 2000.

Delaware is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the corresponding Federal requirements. Unless otherwise indicated, the listed Delaware regulatory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), as amended and effective as of October 1, 2000 (Checklists 175, 176, 178, 179, 180 and 181) or DRGHW, as amended and effective as of June 11, 2001, (Checklists 183, 184, 185 and 187). The statutory references are to 7 Delaware Code Annotated (1991).

Federal requirement	Analogous Delaware Authority
RCRA Cluster IX	
HWIR—Media, 63 *FR* 65874–65947, 11/30/98; Revision Checklist 175	7 Delaware Code (7 Del. Code) Chapter 63, §§ 6305, 6307 and 6310; Delaware Regulations Governing Hazardous Waste (DRGHW) 260.10, 261.4(g), 264.1(j), 264.73(b)(17), 264.101(d), 264.552(a), 264.553(a), 264.554, 265.1(b), 268.2(c), 268.50(g), 122.2, 122.11(d), 122.42, Appendix I, 122.68, 122.73(a), 122.79–122.230.
Universal Waste Rule—Technical Amendments, 63 *FR* 71225–71230, 12/24/98; Revision Checklist 176.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6312 and 6313; DRGHW 266.80, 273.6.
Petroleum Refining Process Wastes—Leachate Exemption, 64 *FR* 6806, 2/11/99; Revision Checklist 178.	7 Del. Code, §§ 6304(b) and 6305; DRGHW 261.4(b)(15).
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, 64 *FR* 25408–25417, 5/11/99; Revision Checklist 179.	7 Del. Code, §§ 6305, 6305(a) and 6307; DRGHW 261.2(c)(3)–(c)(4)/Table, 261.2(e)(1)(iii), 261.4(a)(16), 261.4(a)(17) intro, 261.4(a)(17)(v), 261.4(b)(7)(iii)–(iiiA), 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4)/Table, 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.40(i)–(j), 268.40/Table, 268.48(a)/Table, 268.49(c)(3)(A)–(B).
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, 64 *FR* 26315–26327, 5/14/99; Revision Checklist 180.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6310 and 6312; DRGHW 260.11(a)(11), 260.11(a)(16).
RCRA Cluster X	
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, 64 *FR* 36466–36490, 7/6/99; Revision Checklist 181.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6312 and 6313; DRGHW 260.10, 261.9(b)–(d), 264.1(g)(11)(ii)–(iv), 265.1(c)(14)(ii)–(iv), 268.1(f)(2)–(4), 122.1(c)(2)(viii)(B)–(D), 273.1(a)(2)–(4), 273.2(a)(1), 273.2(b)(2)–(3), 273.3(a), 273.4(a), 273.5–273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)–(5), 273.33(d), 273.34(e), 273.50, 273.60(a), 273.81(a).
Land Disposal Restrictions Phase IV—Technical Corrections, 64 *FR* 56469–56472, 10/20/99; Revision Checklist 183.	7 Del. Code, §§ 6305, 6305(a), 6306 and 6307; DRGHW 261.32, 262.34(a)(4), 268.7(a)(3)(iii), 268.40(j), 268.40/Table, 264.49(c)(1)(A)–(B).
Accumulation Time for Waste Water Treatment Sludges, 65 *FR* 12378–12398; 3/8/00; Revision Checklist 184.	7 Del Code, §§ 6305 and 6306; DRGHW 262.34(a)(4), 262.34(g)–(i).
Organobromine Production Wastes Vacatur, 65 *FR* 14472–14475, 3/17/00; Revision Checklist 185.	7 Del. Code, §§ 6305 and 6305(a); DRGHW 261.32/Table, 261.33(f)/Table, 261 Appendices VII and VIII, 268.33, 268.40/Table, 268.48(a)/Table.
Petroleum Refining Process Wastes—Clarification, 64 *FR* 36365–36367, 6/8/00; Revision Checklist 187.	7 Del Code, § 6305(a), DRGHW 261.31(a)/Table.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated changes to provisions of the State's Program. The following State-initiated changes are equivalent and analogous to the numerically-identical RCRA provisions found at Title 40 of the Code of Federal Regulations: DRGHW 260.10; 261.3(c)(2)(ii)(D)(2); 261.3(d)(2); 261.4(b)(10); 261.5; 264.1(g)(2); 264.13; 265.13; 265.56(j)(5); 265.194(b)(1); 268.4(a)(3)(ii)(B) and 273.32(a)(1). Two other state-initiated changes being authorized by this notice are DRGHW 122.1(c)(2)(i) and 122.42, which are equivalent and analogous to 40 CFR 270.1(c)(2)(i) and 270.42. Delaware added a "Statement of Authority" prior to Part 260 which does not have an analogue in the Federal program.

H. Where Are the Revised State Rules Different From the Federal Rules?

Delaware's regulations now require that within 10 days of acceptance by a transporter, a copy of the manifest must be sent to the State in which the generator is located and to the State in which the facility is located. Only the 10-day deadline is a new requirement. The Federal program does not require routine transmission of manifests to States. Therefore, the State requirement remains broader in scope than the Federal program.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, Delaware will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits, or portions of permits, which we issued prior to the effective date of this authorization until such time as formal transfer of EPA permit responsibility to Delaware occurs and EPA terminates its permits. EPA and Delaware agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any new permits or new portions of permits for the provisions listed in the chart in section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. What is Codification and is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR 272. We reserve the amendment of 40 CFR part 272, subpart I for this authorization of Delaware's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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 (Public Law 104–4). For the same reason, this action does not have tribal implications within meaning of Executive Order 13175 (65 FR 68249, November 6, 2000). This action does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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, 1998) by examining the takings implications of the rule in accordance with the Attorney Generals' "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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 continuing this document and other required information to the U.S. Senate, the U.S. House Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective April 29, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 15, 2002.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 02–4528 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD27

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the amount of premium policyholders pay for flood insurance coverage under the NFIP for "pre-FIRM" buildings in coastal areas subject to high velocity waters, such as storm surges and wind-driven waves (*i.e.*, "V" zones). (The term "pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or the effective date of the community's Flood Insurance Rate Map (FIRM). whichever date is later. Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.) This rate increase brings the premiums we charge for pre-FIRM, V-zone properties more in line with their actual risk.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, (email) *Thomas.Hayes@fema.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Comments

On December 3, 2001, we published at 66 FR 60176 a proposed rule to increase the rates we charge under the NFIP for flood insurance coverage for pre-FIRM properties located in V-zone areas.

During the comment period, we received four sets of comments. Two writers supported the proposal; two opposed it.

The two supporting the proposal represent insurance companies participating in the NFIP's Write Your Own program. The two opposing the rate changes are a State Coordinator for the NFIP and the Insurance Committee of the Association of State Floodplain Managers, a national association promoting sound floodplain management and flood hazard mitigation as well as flood preparedness, warning and recovery.

Lower Rates in Non-SFHAs

One of the insurance companies supporting the proposed rate increase suggested that there should also be a decrease in rates for "very low risk exposures in non-SFHA zones." ("SFHA" zones are "special flood hazard areas" shown on FEMA's flood maps.)

We are already doing this. The NFIP currently offers lower rates for flood coverage under the Preferred Risk Policy (PRP), available only to properties in Zones B, C, and X. (These zones are areas of moderate or minimal flood hazards from the primary water source.) One may buy a PRP totaling $30,000 worth of building coverage and $8,000 worth of contents coverage for a building without a basement or enclosure for $131—well below the premium for comparable coverage in an A-zone area or a V-zone area. The lower premium we charge for PRPs is consistent with the commenter's recommendation.

Opposition to the Rate Increase

The two opponents of the rate change raised questions about the need for a comprehensive approach to reduce flood losses, the amount of the rate increase, the accuracy of the maps used for ratemaking, and erosion mapping. We will address their issues under the headings below.

Need for a Comprehensive Approach

The Insurance Committee of the Association of State Floodplain Managers (ASFPM) contended "that any rate increase must be part of an overall effort to evaluate all measures to reduce flood losses, and such measures must not be based solely on increasing income by increasing the cost of flood insurance, but need to focus on mitigation measures to reduce claims against the NFIP."

We agree with this recommendation. This rate increase is part of a comprehensive approach we are currently pursuing to reduce the subsidy for the NFIP. We have also developed strategies for addressing the costliest drain on the NFIP—repetitive loss properties insured under the NFIP. Ten thousand of those properties currently insured under the NFIP have had four or more flood losses, or two or three losses that cumulatively exceed the value of the building. Within the scope of our budget authority for fiscal year 2002, we will target the riskiest flood-prone properties, especially the repetitive flood loss structures, for mitigation activities, such as relocation, elevation, floodproofing, and other mitigation measures through mitigation grants with the States.

This rate increase is only one incremental step in a much larger campaign to reduce the exposure of property to flood damages, insure more of the Nation's property owners against flood loss, and mitigate future flood losses so that we can continue to operate the NFIP on a financially sound basis.

Taking this step—a modest rate increase for the first layer of coverage for pre-FIRM, V-zone properties—is not at odds with nor does it prevent us from proceeding in other areas such as mitigating repetitive flood loss properties, reducing the subsidy for the NFIP, and promoting the sale of flood insurance. We will also continue to use every opportunity, such as this modest rate increase, to reduce the NFIP's subsidy and mitigate future flood damage.

Amount of Rate Increase

The Insurance Committee of the ASFPM, which opposes the rate increase, also said that the rate increases "range from 10% to 11.5% in rates for pre-FIRM Velocity Zone structures." This is inaccurate. As we said in the proposed rule, "these proposed increases apply only to the rates for the "first layer" of flood insurance coverage." It is estimated that the average total premium for all pre-FIRM. V-zone policyholders will increase to $936, an increase of 6.3% over their current average premium.

This rate increase, therefore, falls within the statutory limit for rate increases imposed by Section 572 of the National Flood Insurance Reform Act of 1994, Pub. L. 103–325, 42 U.S.C. 4015. The corresponding rate increases for other classes of property affected by this rule also fall under this statutory limit.

Exposure to Loss for V-Zone Properties

One opponent of the rate increase argued that we should not increase rates for pre-FIRM, V-zone properties since pre-FIRM, V-zone policyholders in the State of Alaska are already paying "far beyond what the already high premiums have paid out in claims." This opponent also pointed out that a review of the total claims paid for pre-FIRM, V-zone properties in Alaska "does not support the FEMA assertion that pre-FIRM, V-zone properties are 'a particularly risky class of properties.' "

The H. John Heinz III Center for Science, Economics and the Environment, which conducted for FEMA a Congressionally-mandated study evaluating erosion hazards, disagrees with this position. The Heinz Center's report characterizes the "V zone" as the "most hazardous coastal flood risk zone." (See page 39 of *Evaluation of Erosion Hazards,* April 2000). The report, which can be found on FEMA's web site at: *http://www.fema.gov/library/erosion.pdf,* also points out that current insurance rates under the NFIP "do not reflect the magnitude of the erosion risk faced by any individual policyholder." Since V-zone areas—the areas affected by this rule—contain areas subject to erosion, this rate increase will help close the gap somewhat for this rate insufficiency

under the existing mapping authority FEMA has.

We would also point out that there are 4.3 million policies currently in force under the NFIP nationwide; 2,260 flood insurance polices are currently in force in Alaska. Of Alaska's 2,260 flood insurance policies, only eleven (11) are written on properties located in V-zone areas. Those eleven policies for V-zone properties in Alaska do not represent a credible group on which to make ratemaking decisions for pre-FIRM, V-zone properties across the entire country. We need a much larger population of risks to make ratemaking decisions—decisions that will affect similar classes of risks for a national program. We estimate that the proposed rates for first layer V-zone coverage are less than 20% of the full-risk actuarial rate for that layer. We have based this rate increase on the loss experience and loss expectations for all-pre-FIRM, V-zone properties under the NFIP.

Also, we would argue that the limited losses experienced by V-zone properties in Alaska does not result from their lower exposure to loss but rather from the low number of flood insurance policies (eleven) written on properties in Alaska's V-zone areas and the resulting extended time periods needed for the true exposure to emerge.

The Issue of Erosion

The commenter says, "A much riskier class of properties appears to be structures subject to the threat of coastal erosion where a large percentage—at least in Alaska—are paying Preferred Risk Premium Rates but probably are subject to catastrophic loss or substantial damage and not located within a mapped flood zone."

The Heinz Center study for FEMA concluded that the risk to properties in coastal areas is increasing, that the premium rates for flood insurance in coastal areas will in the future be too low, and that Congress should give FEMA the funds and mandate to map areas subject to coastal erosion—about ⅓ of the properties along the coast. Lacking the authority at present to isolate properties in V-zone areas that are subject to erosion risks, this modest rate increase for V-zone properties is a step toward bringing premiums in line with a risk that the Heinz Center study demonstrates is worsening.

Comparison of May 1, 2002 Rate Increases With Current Rates

The following chart compares the current rates we charge for pre-FIRM, V-zone properties with the rate increases for pre-FIRM, V-zone properties to go into effect May 1, 2002. The rates for pre-FIRM, A-zone properties are unaffected by this change. Also these increases apply only to the rates charged for the "first layer" of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub.L. 90–448):

Type of structure	Current V zone[1] rates per year per $100 coverage on:		To take effect May 1, 2002: V zone rates per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential:				
No Basement or Enclosure	.82	.95	.91	1.06
With Basement or Enclosure	.88	.95	.98	1.06
2. All other including hotels and motels with normal occupancy of less than 6 months duration:				
No basement or Enclosure	.95	1.90	1.06	2.10
With basement or Enclosure	1.01	1.90	1.12	2.10

[1] V zones are zones V1–V30, VE, and unnumbered V zones.

Adequacy of FEMA's V-zone Maps

The opponents of the rate increase also argued that V-zone maps need to be updated, and that, until such updating is made and inaccuracies corrected, the rate increase is inappropriate. We recognize that flood maps need to be updated periodically—especially those containing erosion-prone areas where the flood hazard is increasing. That is why we are committed to a multi-million dollar map modernization effort for this fiscal year and beyond; however, to delay needed rate adjustments for a national program on the basis of specific disputed maps or studies would be an overreaction. There are procedures in place for restudying and remapping flood-prone areas; we also have regulatory procedures in place for appealing flood elevations derived from our studies and for correcting or amending published maps by letter. We will refer the expressions of concern about our V-zone maps in general, as well as the specific examples of Alaska's V-zone maps, for consideration and appropriate action within the Federal Insurance and Mitigation Administration.

Request for an Extension of the Comment Period

The two opponents of the rule also pointed out that the 30-day comment period fell within the holiday season, and they asked us to consider an extension beyond January 2, 2002. We contacted the Association of State Floodplain Managers to let them know that, while we will not extend the comment period, we would wait until January 14, 2002—an additional two weeks—to assure them that we would consider any comments that may have been in transit at the close of the comment period. We also pointed out that the proposed rule also offered the public the options to submit comments by email and facsimile. The FEMA Rules Docket Clerk reported that no additional comments were received between January 2, 2002—the official end of the comment period—and January 14, 2002, the last day we would accept any outstanding comments or comments that may have been in the mail at the end of the comment period. In line with the Association's suggestion during that telephone conversation, we will do our best to ensure that any future proposed rate increase will be published well before the holiday season to avoid any potential inconvenience to the public or interested stakeholders.

National Environmental Policy Act of 1969

Under section 102(2) (C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4317 *et seq.*, the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and FEMA's regulations on Environmental Considerations, 44 CFR part 10, we

conducted an environmental assessment of this rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment and Finding of No Significant Impact are on file for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule would result in a modest increase in premiums for V-zone, pre-FIRM buildings and their contents. The adjustment in premiums rates will increase by slightly less than $3 million the amount of premium collected and deposited in the National Flood Insurance Fund each year. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would adjust the premiums for pre-FIRM buildings in V-zone areas. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1.The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise § 61.9(a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for pre-FIRM, A zone properties, pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	A zone rates[1] per year per $100 coverage on—		V zone rates[2] per year per $100 coverage on—	
	Structure	Contents	Structure	Contents
1. Residential:				
No Basement or Enclosure	.68	.79	.91	1.06
With Basement or Enclosure	.73	.79	.98	1.06
2. All other including hotels and motels with normal occupancy of less than 6 months duration:				
No Basement or Enclosure	.79	1.58	1.06	2.10
With Basement or Enclosure	.84	1.58	1.12	2.10

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: January 31, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–4389 Filed 2–26–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–314, MM Docket No. 01–313, RM–10251]

Digital Television Broadcast Service; Tulsa, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KTUL, LLC, licensee of station KTUL–TV, NTSC channels 58, Tulsa, Oklahoma, substitutes DTV channel 10 for DTV channel 58. *See* 66 FR 56794, November 13, 2001. DTV channel 10 can be allotted to Tulsa in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35–58–08 N. and 95–36–55 W., with a power of 7, HAAT of 497 meters and with a DTV service population of 999 thousand.

With this action, this proceeding is terminated.

DATES: Effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–313, adopted February 8, 2002, and released February 14, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 58 and adding DTV channel 10 at Tulsa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–4577 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–298; MM Docket No. 01–249; RM–10272]

Radio Broadcasting Services; Telluride and Norwood, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Rocky II Investments, Inc., the Commission reallots Channel 285C1 from Telluride to Norwood, Colorado as that community's first local aural transmission service, and modifies the license for Station KRYD accordingly. *See* 66 FR 50602, October 4, 2001. Coordinates used for Channel 285C1 at Norwood, Colorado, are 38–00–05 NL and 107–57–53 WL.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–249, adopted January 30, 2002, and released February 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445–12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Telluride, Channel 285C1, and by adding Norwood, Channel 285C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–4576 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 022102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole/Flathead Sole/"Other Flatfish" by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the 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 rock sole/flathead sole/"other flatfish" by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 bycatch allowance of red king crab specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 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 2002 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21 (e)(3)(iv)(B)(2), is 59,782 animals (67 FR 956, January 8, 2002).

In accordance with § 679.21 (e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 bycatch allowance of red king crab specified for the trawl rock sole/flathead sole/"other flatfish" fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for rock sole/flathead sole/"other flatfish" by vessels using trawl gear in Zone 1 of 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 red king crab bycatch allowance for the trawl rock sole/flathead sole/"other flatfish" fishery category in Zone 1 of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the red king crab bycatch allowance for the trawl rock sole/flathead sole/"other flatfish" fishery category in Zone 1 of the BSAI 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: February 21, 2002.

Richard W. Surdi,

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

[FR Doc. 02–4642 Filed 2–22–02; 2:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 39
Wednesday, February 27, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600 and 1650

Employee Elections To Contribute to the Thrift Savings Plan and Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is proposing to amend the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to permit participants, beginning April 1, 2002, to transfer into their TSP accounts tax-deferred balances from an expanded group of eligible retirement plans. The Executive Director is also proposing to amend the regulations on loans and withdrawals from the TSP to specify that a participant who is seeking an exception to the spousal signature and notification requirements on the ground that the spouse's whereabouts are unknown must demonstrate that he or she made a good faith effort to locate the spouse in the 90 days preceding submission of the request to the TSP.

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

ADDRESSES: Comments may be sent to : Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Thomas L. Gray on (202) 942–1662; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

Analysis of the Amendment to Part 1600

On December 2, 1987, the Board published in the **Federal Register** (52 FR 45802) interim rules concerning the procedures governing employee contributions to the TSP. A final rule was published in the **Federal Register** (59 FR 55331) on November 4, 1994. On October 27, 2000, Congress passed Public Law 106–361, which amended FERSA to permit the TSP to accept into the Plan any eligible rollover distribution, as that term is defined in section 402(c)(8) of the Internal Revenue Code (I.R.C.), that a qualified trust could accept. 5 U.S.C. 8432(j). Accordingly, on May 2, 2001 (66 FR 22088), the Board amended the final rule to permit participants to transfer into their TSP accounts funds from certain qualified retirement plans and conduit individual retirement accounts (IRAs). This proposed rule further amends the final rule.

On May 26, 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, which included a number of pension reform provisions. Among those was a provision expanding the definition of eligible retirement plan and thus expanding the types of plans into and from which an eligible rollover distribution can be made. Under EGTRRA, an eligible retirement plan includes: an individual retirement account described at I.R.C. § 408(a); an individual retirement annuity described at I.R.C. § 408(b); a plan qualified under I.R.C. § 401(a), including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an I.R.C. § 403(a) annuity plan; an I.R.C. § 403(b) tax-sheltered annuity; and an eligible I.R.C. § 457(b) plan maintained by a governmental employer. (The first two plans are also known as "traditional IRAs'; the others are known as "eligible employer plans.") The proposed amendment therefore provides that, beginning April 1, 2002, the TSP will accept an eligible rollover distribution from any eligible retirement plan.

EGTRRA also permitted plans to accept after-tax contributions if their plan documents were amended to allow such contributions. The TSP's plan document, the Federal Employees' Retirement System Act, does not, however, allow the TSP to accept after-tax money; therefore, the requirement is unchanged that an eligible rollover distribution transferred or rolled over into the TSP must consist solely of tax-deferred money. Also, uniformed services participants who are permitted to make tax-exempt contributions to their uniformed services TSP accounts cannot transfer those monies into their civilian TSP accounts.

Analysis of the Amendment to Part 1650

Part 1650 was published in final form in the **Federal Register** on February 21, 1995 (60 FR 9595); the rule was substantially revised and published in final form again on September 18, 1997 (62 FR 49112). The final rule was subsequently amended on June 9, 1999 (64 FR 31052) and on August 20, 2001 (66 FR 43461). This proposed rule further amends the final rule.

FERSA provides that the spouse of a FERS participant or uniformed services member must consent to a loan or in-service withdrawal and waive his or her entitlement to a joint and survivor annuity in the case of a different post-employment withdrawal election (signature requirement). 5 U.S.C. 8435(a)(1)(B), (b) and (e)(1)(A), and 8440e(c). In addition, the spouse of a CSRS participant is entitled to be given notice when the participant applies for a loan or withdrawal (notice requirement). 5 U.S.C. 8351(b)(5)(B). These requirements do not apply, however, if a participant can establish to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. 5 U.S.C. 8351(b)(5)(C), 8435(a)(2), (b) and (e)(1)(C).

Section 1650.63(a)(3) provides that an exception to the spousal signature or notice requirement may be granted if a participant submits statements from himself or herself and from two other persons that explain the participant's inability to locate the spouse and describe the good faith efforts the participant has made to locate the spouse. Currently, the regulation does not prescribe a time period within

which these efforts must have been made; informally, the TSP has accepted efforts to locate the spouse that are as much as 12 months old; however, efforts to locate a spouse that are 12 months old may be stale. The requirement to make an effort to locate a spouse is not an onerous one, particularly when one considers the significance of the spouses' rights that may be affected. Thus, the Executive Director is proposing to amend the regulations to state clearly that the participant's efforts to locate the spouse must have been made within the 90 days preceding submission to the TSP of the request for an exception.

In addition, section 1650.63(b) currently provides that an approved exception is valid for one year. Without a concurrent change to this provision, a participant's efforts to locate the spouse could still be more than 15 months old by the time a withdrawal or loan is approved. Accordingly, the Executive Director is also proposing to amend this section to provide that an approved exception will be valid for only 90 days; conforming amendments are also proposed for §§ 1650.60(b), 1650.61(b) and (c)(1)(ii), 1650.62(b) and (c), and 1650.64(c), replacing references to a one year period with a reference to a 90-day period. This means that a participant applying to the TSP for a loan or withdrawal without his or her spouse's signature, or, if applicable, the spouse's address, must have made a good faith effort to locate the spouse within the last 6 months if there is no judicial, police, or governmental finding that the spouse's whereabouts cannot be determined.

The TSP's loan regulations at 5 CFR 1655.18(e) incorporate the provisions of § 1650.63. Therefore, the requirements for an exception to the spousal rights requirements will also change for participants applying for a loan.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects

5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, chapter VI, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

1. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Section 1600.1 is amended by adding in alphabetical order the following definition:

§ 1600.1 Definitions.

* * * * *

Eligible retirement plan means an individual retirement account described in I.R.C. § 408(a) (26 U.S.C. 408(a)); an individual retirement annuity described in I.R.C. § 408(b) (26 U.S.C. 408(b)) (other than an endowment contract); a qualified trust; an annuity plan described in I.R.C. § 403(a) (26 U.S.C. 403(a)); an eligible deferred compensation plan described in I.R.C. § 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. § 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)); and an annuity contract described in I.R.C. § 403(b) (26 U.S.C. 403(b)).

* * * * *

3. Section 1600.31 is revised to read as follows:

§ 1600.31 Accounts eligible for transfer.

(a) Effective when the proposed rule becomes final, a participant who receives an eligible rollover distribution, within the meaning of I.R.C. § 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible retirement plan may transfer that distribution into his or her existing TSP account. This option is not available to participants who have already made a full withdrawal of their account after separation from service or who are receiving monthly payments.

(b) The only monies that the TSP will accept are monies that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP will not accept any monies that have already been subjected to Federal income tax (after-tax monies) or monies that will not be subject to Federal income tax (tax-exempt monies).

4. Section 1600.32 is revised to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

(a) *Trustee-to-trustee transfer.* Participants may request that the administrator, trustee, or custodian of their eligible retirement plan transfer any or all of their account directly to the TSP by executing and submitting a Form TSP–60 or TSP–U–60, Request for a Transfer into the TSP, to the administrator, trustee, or custodian. The administrator, trustee, or custodian must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper.

(b) *Rollover by participant.* Participants who have already received an eligible rollover distribution from an eligible retirement plan may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete Form TSP–60 or TSP–U–60, Request for a Transfer Into the TSP.

(2) The administrator, trustee, or custodian of the eligible retirement plan must certify on the Form TSP–60 or TSP–U–60 the amount and date of the distribution.

(3) The participant must submit the completed Form TSP–60 or TSP–U–60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the "Thrift Savings Plan," for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible retirement plan. The transaction is not complete until the TSP recordkeeper receives the Form

TSP–60 or TSP–U–60, executed by both the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) *Participant's certification.* When transferring an eligible rollover distribution to the TSP by either a trustee-to-trustee transfer or a rollover, the participant must certify that:

(1) The distribution is not one of a series of substantially equal payments made for the life of the participant or for a period of 10 years or more;

(2) The distribution is not a minimum distribution required under I.R.C. § 401(a)(9) (26 U.S.C. 401(a)(9));

(3) The distribution is not a hardship distribution; and

(4) If not transferred or rolled over, the distribution would be includible in gross income for the tax year in which the distribution is paid.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

5. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

§§ 1650.60, 1650.61 and 160.62 [Amended]

6. Sections 1650.60(b), 1650.61(b) and (c)(1)(ii), and 1650.62(b) and (c) are amended by removing the words "one year" and adding in their place the words "90 days".

7. Sections 1650.63(a)(3) and (b) are revised to read as follows:

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) * * *

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days preceding submission to the TSP of the request for an exception. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, "I have not seen nor heard from him" or, "I have not had contact with her", are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant has made attempts within the preceding 90 days to locate the spouse and that the participant does not know the spouse's whereabouts.

(iii) All statements must be signed and dated and must include the following certification:

I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.

(b) A withdrawal election received within 90 days of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 [Amended]

8. Section 1650.64(c) is amended by removing the words "one-year period" and adding in their place the words "90-day period".

[FR Doc. 02–4499 Filed 2–26–02; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to MT-Propeller Entwicklung GMBH models MTV–9–B–C and MTV–3–B–C propellers. That AD currently requires initial and repetitive inspections of Torx head blade root lag screws that are used on certain serial number (SN) propellers and replacing all lag screws on the propeller if any screws are found broken or with insufficient torque. In addition, that AD currently requires replacing certain part number (P/N) Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This proposal would require the expansion of the applicability from certain SN propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws. This proposal is prompted by FAA awareness that a propeller hub of an affected propeller could be changed, thereby changing the propeller serial number, creating a propeller that is not listed in the AD and that has affected blades and lag screws. The actions specified by the proposed AD are intended to prevent failure of the blade root lag screw, which could result in propeller blade separation and loss of control of the airplane.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet address: "propeller@aol.com". This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 23, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–14–06, Amendment 39–11216 (64 FR 36777, July 8, 1999), to require for certain serial number propellers, initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found broken or with insufficient torque, replacement of all screws with new lag screws. In addition, that AD requires replacement of certain model Torx head blade root lag screws with improved, hexagonal head blade root lag screws.

Since AD 99–14–06 was issued, a question from a repair facility to the FAA brought to light that if a propeller hub of an affected propeller were to be replaced, the propeller serial number would then be different and, not necessarily on the list of affected propellers in the AD. This would cause affected blades to be missed for inspections. To eliminate this potential for blades not being inspected, this proposal would require the same inspections as AD 99–14–06 but for all model MTV–9–B–C propellers equipped with CL250–27, or CL260–27 blades with S/N's starting with letter "A" through "P" and all model MTV–3–B–C propellers equipped with S/N L250–21 blades with S/N's starting with letter "A" through "P".

Manufacturer's Service Information

MT-Propeller Entwicklung GMBH has issued Service Bulletin (SB) No. 17–A, dated March 5, 1999, that specifies procedures for inspections for Torx head blade root lag screws for torque values and breakage, and replacement of Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The LBA classified this SB as mandatory and issued airworthiness directives (AD's) 1999–081/2 and 1999–082/2 in order to assure the airworthiness of these propellers in Germany.

Bilateral Agreement Information

This propeller model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, this proposal requires initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found with insufficient torque or are broken, replacement of all screws with new lag screws. In addition, this AD requires replacement of Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The actions would be required to be done in accordance with the SB described previously.

Economic Analysis

There are approximately 250 propellers of the affected design in the worldwide fleet. The FAA estimates that 125 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 13 work hours per propeller to do the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $97,500.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11216, (64 FR 36777 July 8, 1999), and by adding a new airworthiness directive:

MT-Propeller Entwicklung GMBH: Docket No. 99–NE–35–AD. Supersedes AD 99–14–06, Amendment 39–11216.

Applicability: This airworthiness directive (AD) is applicable to MT-Propeller Entwicklung GMBH Model MTV–9–B–C propellers equipped with CL250–27 or CL260–27 blades with serial numbers (SN's) starting with letter "A" through "P", equipped with Torx head blade root lag screws, part number (P/N) A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch); and Model MTV–3–B–C propellers, equipped with L250–21 blades with SN's starting with letter "A" through "P", equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch),

or P/N A–550–85 (4mm thread pitch). These propellers are installed on, but not limited to, Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55, and Technoavia SM–92 airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already done.

To prevent blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane, do the following:

(a) For propellers with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), inspect Torx head blade root lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 17–A, dated March 5,1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS), or within two months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 100 hours TIS, or within 12 months, whichever occurs first.

(3) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with new lag screws.

(b) For propellers with lag screws, P/N A–550–85 (4mm thread pitch), inspect lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5,1999, as follows:

(1) Inspect within 50 hours TIS, or within two months after the effective date of this AD, whichever occurs first.

(2) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with improved, hexagonal head blade root lag screws, P/N A–983–85. Torque screws to 58–60 foot-pounds.

(c) Replace lag screws, P/N A–550–85, within 100 hours TIS, or within 12 months after the effective date of this AD, with lag screws, P/N A–983–85, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999. Torque screws to 58–60 foot-pounds.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators must submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

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

Special Flight Permits

(e) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on February 20, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–4587 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 46, 301

[REG–107100–00]

RINs 1545–AY26, 1545–BA00, 1545–AY83, 1545–BA38, 1545–AY93, 1545–BA36 and 1545–AW92, 1545–AY82, 1545–AY87, 1545–BA06, 1545–BA09, 1545–BA26, 1545–AY94, 1545–BA25

Miscellaneous Federal Tax Matters; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notices of proposed rulemaking.

SUMMARY: This document corrects the language referring taxpayers to the IRS Internet site for several notices of proposed rulemaking published in the **Federal Register**. The proposed regulations that need correction are identified in the table set out in this correction notice.

FOR FURTHER INFORMATION CONTACT: Donna Poindexter, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On various dates from November 2001 through February 2002, several notices of proposed rulemaking were published in the **Federal Register** that contained inaccurate language referring taxpayers to the IRS Home Page and the IRS Internet site address. This document corrects this language.

Need for Correction

For the documents listed in the table, the inaccurate language and IRS Internet site address published in the notices of proposed rulemaking is misleading and in need of correction.

Correction of Publications

Accordingly, for each entry listed in the table, remove the language from the **ADDRESSES** caption in the preamble as set out in the "Remove" column and add the language in the "Add" column in its place.

Project No.	Subject	Date Published	Citation	Remove	Add
REG–107100–00	Disallowance of Deductions and Credits for Failure to File Timely Return.	01–29–02	67 FR 4217	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regs list.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–125638–01	Guidance Regarding Deduction and Capitalization of Expenditures.	01–24–02	67 FR 3461	Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–115054–01	Treatment of Community Income for Certain Individuals Not Filing Joint Returns.	01–22–02	67 FR 2841	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–159079-01	Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and is Entitled to an Immediate Payment.	01–17–02	67 FR 2387	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–125450–01	Liability for Insurance Premium Excise Tax.	01–07–02	67 FR 707	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–142299–01 REG–209135–88	Certain Transfer of Property to Regulated Investment Companies and Real Estate Investment Trusts.	01–02–02	67 FR 48	Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG–142299–01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent to the IRS Internet site at: *http://www.irs.gov/tax_regs/regslist.html.*	Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG–142299–01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS *www.irs.gov/regs.*

Project No.	Subject	Date Published	Citation	Remove	Add
REG–112991–01	Credit or Increasing Research Activities.	12–26–01	66 FR 66362	Alternatively, taxpayers may submit comment electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–119436–01	New Markets Tax Credit.	12–26–01	66 FR 66376	Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–126485–01	Statutory Mergers and Consolidations.	11–15–01	66 FR 57400	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Reg option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–137519–01	Consolidated Returns; Applicability of Other Provisions of Law; Non-Applicability of Section 357(c).	11–14–01	66 FR 57021	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–142686–01	Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options.	01–28–02	67 FR 3846	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–125626–01	Unit Livestock Price Method.	02–04–02	67 FR 5074	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*
REG–120135–01	Definition of Agent for Certain Purposes.	02–01–02	67 FR 4938	Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*	Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

Cynthia Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).
[FR Doc. 02–4676 Filed 2–22–02; 2:59 pm]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–016]

RIN 2115–AA97

Safety and Security Zones; Boston, Massachusetts Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Coast Guard proposes to establish one temporary and three permanent safety and security zones within the Boston Marine Inspection and Captain of the Port Zone. The safety and security zones will prohibit entry into or movement within a portion of Boston and Salem Harbors and are needed to ensure public safety and prevent sabotage or terrorist acts against vessels and the Port of Boston.

DATES: Comments and related material must reach the Coast Guard on or before March 8, 2002.

ADDRESSES: MSO Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Maritime Security Operations, MSO Boston, at 617–223–3030.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01–02–016, indicate the specific section of this document to which each comment applies, and give the reason for each comment.

You have until March 8, 2002 to comment on this proposed rule involving Boston and Salem Harbors. This short comment period will permit the Coast Guard to publish a final rule before the expiration of the existing temporary RNA (CGD01–01–162; published in the **Federal Register** September 27, 2001, 66 FR 49280), safety and security zones. These proposed measures were implemented as a temporary emergency rulemaking shortly following the terrorist attacks of September 11, 2001. That emergency rulemaking is discussed herein under the **Background and Purpose** section of this preamble.

These measures were implemented to ensure the safety of the vessels whose movement is being regulated, others in the maritime community, surrounding communities and the public from possible terrorist attacks aimed at vessels or committed from vessels. Temporary safety and security zones were also promulgated to ensure the security of vulnerable waterfront areas. This proposed rulemaking would make permanent those temporary emergency regulations. As those regulations expire on March 15, 2002, a shortened comment period is necessary to ensure that there is no gap in these regulations in order to provide continuous security for the waterfront areas protected by the rulemaking.

As the public and maritime community have been operating under these regulations since September 18, 2001, there is a basis for the public providing constructive comments from actual experience with the temporary regulations in a brief period of time. Due to this shortened comment period, in order to provide additional notice to the public, we will do the following: place a notice of our proposed rule in the local notice to mariners, post the published Notice of Proposed Rulemaking on the MSO Boston Web site at *http://www.uscg.mil/d1/units/msobos/*, and advise port users of the published NPRM at local port operator group meetings.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we expect, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Immediately following the September 11 attacks, a temporary rule published in the **Federal Register** (66 FR 49280, September 27, 2001) established temporary anchorage grounds, Regulated Navigation Areas, and safety and security zones in the Boston, Massachusetts Marine Inspection Zone and Captain of the Port Zone. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That rule expires on March 15, 2002.

The Coast Guard proposes to establish permanent safety and security zones in Boston and Salem Harbors as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, permanently available safety and security zones in Boston and Salem Harbor are prudent provide for the safety of the port. The Captain of the Port will determine when these zones are enforced based on potential threats and may establish conditions under which vessels are allowed to enter, transit or operate within these zones.

Under the proposed rule, the Coast Guard would establish one temporary and three permanent safety and security zones having identical boundaries, around Coast Guard Integrated Support Command, Boston, the Distrigas Marine Terminal in Everett, MA, the PG & E power Plant in Salem, MA, and in the Reserved Channel, Boston, MA. These zones would restrict entry into or movement within portions of Boston Inner Harbor. The one temporary safety

and security zone will be around the Distrigas terminal. It is needed to extend the effective time period of a previous zone created around Distrigas under CGD01–01–162 until this zone can be made permanent under a separate regulation more suited to its inclusion. These zones are deemed necessary due to the vulnerable nature of these locations as possible targets of terrorist attack.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Proposed Rule

Safety and Security Zones.

This proposed rule will establish one temporary and three permanent safety and security zones having identical boundaries. Three of these proposed zones are being established by reference to a radius around an easily identifiable landmark; the other is defined by an area enclosed by a line connecting two easily identifiable landmarks. These four zones are proposed in the following areas: (1) All waters of the Mystic River within a 500-yard radius of the Distrigas terminal pier in Everett, MA; (2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the southeastern tip of the Black Falcon Pier and the northeastern corner of the Paul W. Conley Marine Terminal pier; (3) All waters of Boston Inner Harbor within a 200-yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA; and (4) All waters of Salem Harbor within a 500-yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

The proposed zone surrounding the Reserved Channel is necessary due to the high vulnerability of the Reserved Channel as a target for subversive activity or terrorist attack. The Reserved Channel covers Black Falcon Cruise Terminal, at which numerous cruise ships tie up each year. The proposed zones in the Reserved Channel would protect these cruise ships from subversive activity or terrorist attack for which they are vulnerable targets due to the significant number of casualties that would be incurred by an attack from the water. The proposed zone around the Coast Guard Integrated Support Command is necessary in order to ensure the safety and security of this military facility, and to protect Coast Guard and other vessels moored at this facility from subversive activity or terrorist attack.

The proposed zone around the PG & E facility is needed to protect both vessels moored at this facility and the vital infrastructure the terminal represents from subversive activity or terrorist attack. The one proposed temporary safety and security zone will be around the Distrigas terminal and is needed to protect both vessels moored at this facility and the vital infrastructure the terminal represents as well. The temporary safety and security zones around the Distrigas facility imposed by the temporary rule published September 27, 2001 are scheduled to expire on March 15, 2002. The safety and security zones proposed in this rulemaking are proposed to provide continuity in the protection of this facility from March 15, 2002, until June 15, 2002, when permanent regulations are to be implemented.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around some of the safety and security zones in Boston Harbor and the proposed zone in Salem Harbor; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential impacts, the Coast Guard still deems that these safety and security zones are need to protect the ports of Boston and Salem and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston and Salem Harbor in which entry would be prohibited by safety or security zones.

This proposed rule would not have a significant impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the proposed zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the Port of Boston are deemed to be low.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry, Maritime Security Operations. Marine Safety Office Boston, at 617–223–3030.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From March 15, 2002 until June 15, 2002, add temporary section § 165.T01–006 to read as follows:

§ 165.T01–006 Safety and Security Zones: Mystic River, Everett, MA.

(a) *Safety and Security Zones.* The following are established as safety and security zones: All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA;

3. Add § 165.105 to read as follows:

§ 165.105 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and Security Zones.* The following are established as safety and security zones:

(1) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the Black Falcon pier and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(2) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(3) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. generating power plant pier in Salem, MA.

(b) *Effective date.* This section is effective beginning March 15, 2002.

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

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: February 15, 2002.

B.M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–4842 Filed 2–25–02; 2:50 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2001–11201]

Port Access Routes Study; Along the Sea Coast and In the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study; correction.

SUMMARY: On January 18, 2002 the Coast Guard announced in a **Federal Register** notice of study and request for comments that we were conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. In the *Background and Purpose* section of the preamble to the notice, we listed an incorrect expected completion date for the PARS as January 31, 2002. The purpose of this correction is to make clear that the comment period will continue until March 19, 2002, and that the PARS will be completed after a review and analysis of all comments and data collected.

DATES: Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–11201), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6229, e-mail *TWflynn@lantd5.uscg.mil;* or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2001–11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

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

Background and Purpose

On January 18, 2002, the Coast Guard published a notice in the **Federal Register** entitled "Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina" (67 FR 2616). In the preamble to the notice we indicated that the study would begin immediately and that we expected to complete the study by January 31, 2002. This incorrect study completion date was based on an earlier projected publishing date of the notice announcing the start of the Port Access Routes Study.

Need for Correction

The study will not be completed before the end of the comment period, which is March 19, 2002. We listed an earlier estimated completion date in the January 18, 2002, notice. The removal of this date is needed to accurately reflect that the study has not yet been completed and that the comment period will remain open until March 19, 2002.

Correction of Publication

In rule FR Doc. 02–1371 published on January 18, 2002, make the following correction: On page 2618, in the first column, starting on line 25, remove the phrase "and we anticipate the study will be completed by January 31, 2002".

Dated: February 19, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–4632 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI31

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary trade as a use of subsistence-taken resources. However, the current Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. When final, this rulemaking would replace a portion of the existing regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D–2002 Subsistence Taking of Fish and Wildlife Resources," which expire on February 28, 2003.

DATES: The Federal Subsistence Board must receive your written public comments on this proposed rule no later than March 29, 2002. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive comments on this proposed rule from February 20, 2002—March 21, 2002. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may be able to submit electronic comments and other data to *BillKnauer@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. Public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council	Hoonah	March 12, 2002.
Region 2—Southcentral Regional Council	Anchorage	March 5, 2002.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 18, 2002.
Region 4—Bristol Bay Regional Council	Dillingham	February 28, 2002.
Region 5—Yukon-Kuskokwim Delta Regional Council	Tuntutuliak	March 6, 2002.
Region 6—Western Interior Regional Council	McGrath	March 19, 2002.
Region 7—Seward Peninsula Regional Council	Nome	February 26, 2002.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 21, 2002.
Region 9—Eastern Interior Regional Council	Circle Hot Springs	February 25, 2002.
Region 10—North Slope Regional Council	Barrow	February 20, 2002.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments: You may submit electronic comments and other data to *Bill_Knauer@fws.gov*. Please check whether this option is available before filing. Electronic access to Department of the Interior and Fish and Wildlife Service employees and offices has recently been suspended by the courts and may not be reestablished in time for filing of comments on this proposed rule. If electronic filing of comments is possible, please submit your comments as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 14, 2002. You may provide additional oral testimony before the Board at that time. The Board will then deliberate and may take final action on requested changes to this proposed rule at that public meeting.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999, (64 FR 1276), the Departments published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development

of Federal Subsistence Management Regulations (Subparts A, B C, and D).

The Board has reviewed and approved the publication of this proposed rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2002.

Recognizing Customary Trade Practices

Title VIII of ANILCA specifically identifies customary trade as a recognized part of subsistence uses. The term "customary trade" is defined in these regulations as "* * * cash sale of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise." The distinction between the terms "customary trade" and "barter" (which is also provided for in Title VIII) is that "customary trade" is the exchange of subsistence resources for cash, while "barter" is defined as the exchange of subsistence resources for something other than cash. While the exchange of subsistence resources as customary trade may involve fish, shellfish or wildlife resources, this proposed rule only covers the customary trade of fish resources.

Prior to the expansion of the Federal program to include management on other waters on October 1, 1999, Federal Subsistence Board regulations applied only to subsistence fisheries in non-navigable waters. Those regulations contained the same definition for customary trade cited above, but also included the following regulatory language (in § _____.26(c)(1)): "No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade". During the development of the regulations for the expanded fisheries program, it was recognized that the customary trade of fisheries resources was ongoing in many parts of Alaska, but was not provided for in the existing Federal regulation nor in existing State regulations (except for the sale of herring roe on kelp in southeast Alaska). Therefore the general prohibition in § _____.26(c)(1) was replaced effective October 1, 1999, with the following language which generally permits customary trade:

§ _____.26(c)(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

While detailed statistics are not available to show where customary trade transactions of fishery resources take place, we believe that the large majority of such transactions take place within rural villages or non-rural communities. Generally, the Federal subsistence regulations apply only within or adjacent to conservation system units and other Federal lands as described in § _____.3 of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence-taken resources (including the current regulations as well as the proposed regulations below) extend to any customary trade of legally-taken subsistence fish regardless of where the actual cash transaction takes place. However, State officials may disagree with that view.

Current Federal regulations regarding customary trade need to be refined. Much of the current discord and uncertainty associated with customary trade relates to the term "significant commercial enterprise" which is not defined in the regulations. Additionally, there is a concern that by allowing customary trade without further regulatory clarification, a loophole is created for valuable subsistence resources to become a commodity on the commercial market for monetary gain by those who wish to take wrongful advantage of the system. Without a more specific definition of "significant commercial enterprise" or other regulatory modification, law enforcement personnel regard the current regulation unenforceable. Another concern expressed by the Regional Councils is the need for a regional approach to customary trade regulations to take into account differences among the Regions.

Recognizing these concerns, the Board initiated an agreement with the Alaska Department of Fish and Game to assemble information on contemporary customary trade. In December 2000, the State submitted a report entitled "Sharing, Distribution, and Exchange of Wildlife Resources, An Annotated Bibliography of Recent Sources" documenting a wide range of continuing practices.

In late 2000, the Board established a Customary Trade Task Force composed of representatives of the 10 Regional Councils, fishery biologists, enforcement personnel, anthropologists, and others. This Task Force was charged with developing draft regulatory language defining the intent of customary trade as identified in ANILCA Title VIII. They met several times during 2001, requested, received, and considered public comments, and eventually developed preliminary draft regulatory language. The Task Force identified three different types of customary trade, with specific recommendations for each type. In the first, trade between rural residents, the Task Force recommended that unlimited cash exchange be permitted.

For the second type, trade between rural residents and others (the term "others" is defined as "commercial entities other than fishery businesses or individuals other than rural residents"), the Task Force recommended that customary trade also be permitted but that a monetary cap be applied to the customary trade of salmon. The Task Force chose a cap of $1,000 per household member per year for salmon as a starting point for discussion and potential modification by each Council. For the third type, customary trade or barter to fisheries businesses, the Task Force recommended that this activity not be permitted. This draft was circulated for review by all ten Regional Councils, the 229 Federally recognized tribes, and for general public review. The Task Force met one more time to consider all comments received and eventually developed draft language that was presented to the Board on December 12, 2001, as Option 1 of six options for Board consideration. It should be noted that the preliminary draft language that was provided to the Regional Councils, Tribal governments, and general public was modified during the final meeting of the Task Force and then further modified by the Board at its December 2001 meeting.

The Board initiated tribal consultation with 229 Federally recognized tribes, using the preliminary draft language from the Task Force. In addition, Federal staff met with representatives of several villages, Tribal associations, and Regional Corporations. The consultation was conducted pursuant to the Department of the Interior, Alaska Policy on Government to Government Relations with the Alaska Native Tribes. Three tribal governments submitted comments. Two of the Tribal governments concurred with the proposed regulatory language; the comments from the third tribal government were not specific to customary trade.

During the review of the draft Task Force recommendation by the Regional Councils, seven of the ten Councils made specific regional recommendations. Included as part of the Task Force draft language was a $1,000 cap per household member per year for the exchange of salmon for cash between rural residents and others. The Regional Council comments generally agreed with a monetary cap but also suggested regional needs and differences. Some Regional Councils thought the $1,000 cap too high; others thought it too low. Several Council members expressed concern about allowing sales of subsistence-taken salmon in areas experiencing subsistence shortages and limited fishing opportunities. In recent years, areas such as the Yukon and Kuskokwim Rivers have had poor salmon returns requiring managers to reduce subsistence fishing schedules and, in some instances, close subsistence fishing. Some Regional Councils also were concerned that the draft language restricted barter between rural residents and others. The specific recommendations of the Regional Councils are summarized below for each Fishery Management Area: (**Note:** In several cases, the boundaries of Fishery Management Areas do not coincide with Regional Council boundaries. For example, the Cook Inlet Fishery Management Area is divided approximately equally between the Southcentral and Bristol Bay Regional Advisory Council areas. For clarity, the recommendations listed below include only the recommendation of one Council for each Fishery Management Area.)

Kotzebue Area

The total cash value per household member of salmon taken in the Kotzebue Area exchanged in customary trade to others should not exceed $1,000.00 annually.

Norton Sound-Port Clarence Area

The total cash value of salmon taken in the Norton Sound-Port Clarence Area exchanged in customary trade by each household member to others should not be limited.

Yukon-Northern Area

The total cash value per household member of salmon taken in the Yukon-Northern Area exchanged in customary trade to others should not exceed $1,000.00 annually.

Kuskokwim Area

The total cash value per household member of salmon taken in the Kuskokwim Area exchanged in customary trade to others should not exceed $1,000.00 annually.

Bristol Bay Area

The total cash value per household member of salmon taken in the Bristol Bay Area exchanged in customary trade to rural residents should not exceed $1,000.00 annually.

The total cash value per household member of salmon taken in the Bristol Bay Area exchanged in customary trade to others should not exceed $400.00 annually.

Aleutian Islands Area

The total cash value per household member of salmon taken in the Aleutian Islands Area exchanged in customary trade to others should not exceed $1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

Alaska Peninsula Area

The total cash value per household member of salmon taken in the Alaska Peninsula Area exchanged in customary trade to others should not exceed $1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

Chignik Area

The total cash value per household member of salmon taken in the Chignik Area exchanged in customary trade to rural residents should not exceed $1,000.00 annually.

The total cash value per household member of salmon taken in the Chignik Area exchanged in customary trade to others should not exceed $400.00 annually.

Kodiak Area

The total cash value per household member of salmon taken in the Kodiak Area exchanged in customary trade to others should not exceed $1,000.00 annually.

[The Regional Council also recommended: These regulations should expire in two years from the effective date of the regulations unless extended, superseded, modified, or revoked.]

Cook Inlet Area

The total cash value per household member of salmon taken in the Cook Inlet Area exchanged in customary trade to others should not exceed $1,000.00 annually. At least 50% of all fish taken by a household under subsistence regulations should be kept for the household's consumption.

Prince William Sound Area

The total cash value per household member of salmon taken in the Prince William Sound Area exchanged in customary trade to others should not exceed $1,000.00 annually. At least 50% of all fish taken by a household under subsistence regulations should be kept for the household's consumption.

Yakutat Area

The total cash value of salmon taken in the Yakutat Area exchanged in customary trade by each household member to others should not be limited.

Southeastern Alaska Area

The total cash value of salmon taken in the Southeastern Alaska Area exchanged in customary trade by each household member to others should not be limited.

The Customary Trade Task Force received 17 written comments from the public, government agencies, private organizations, and individuals expressing concerns regarding the issue of customary trade generally and regarding the draft regulatory language in particular. There was general recognition that customary trade is integral to the subsistence way of life; however, some commentors said that subsistence should not include any cash transactions. Some commentors said that there is a need to authorize existing practices without creating new uses or expanding existing ones, while others stated that there is little or no need to regulate this practice. Some commentors expressed concern that an inappropriate cash limit would create a hardship for subsistence users. Some expressed concern that the practice of customary trade will have an impact on resources, and some felt that customary trade should not have the same priority as the use of fish for food. Other commentors object that the regulations do not address potential impacts on commercial fisheries. Some commentors expressed concern that setting a dollar amount would encourage unscrupulous behavior patterns or invite abuse resulting in significant cash sales to the detriment of the resource. Others believe that setting a cash limit would protect the resource. Concern was expressed that improperly processed fish present a health risk to the consumers. A related concern is that these proposed regulations may put many subsistence fishers in violation of State and Federal food laws. Many commentors felt that the Board's projected timeline for finalizing this proposed regulation is too brief, because it does not provide adequate time to determine necessary harvest amounts or to coordinate with State regulations, nor does it allow time to address all the issues the proposed regulation raises. Some later commentors stated during Board discussion that there should also be a prohibition on the sale of subsistence-taken fish to State-licensed fishery businesses (not just a prohibition on the purchase by such businesses.)

After the Council, tribal government, and public review, the Task Force met one more time to consider comments received during that review. In general there was concurrence with the Task Force recommendations for unlimited customary trade between rural residents and a prohibition against customary trade between rural residents and fisheries businesses. (Two exceptions to this concurrence were the Bristol Bay Regional Council recommendations for a $1,000 limit on customary trade between rural residents in the Bristol Bay and Chignik Areas.) Based on concerns expressed at this Task Force meeting about the enforceability of a monetary cap on the exchange between rural residents and others, the Task Force added a permitting requirement to this section.

At its December 2001 meeting, the Board considered six options for a proposed rule regarding customary trade. They were:

Option 1—Publish the proposed rule for public comment with the draft regulatory language, including a permitting requirement, as recommended by the Customary Trade Task Force. This includes: unlimited customary trade transactions between rural residents; a $1,000 limit for customary trade and barter of salmon, their parts, or their eggs between rural residents and others; a Federal customary trade and barter permit to implement this provision; and a prohibition of exchanges with fisheries businesses. The Task Force recommended establishment of a Federal permit as a necessary provision to monitor customary trade use patterns, as well as to accommodate agency enforcement needs.

Option 2—Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except replace the permitting requirement with a recordkeeping requirement. Option 2 would be identical in regulatory language to Option 1, with the exception of language addressing the transactions between a rural resident and others. Instead of establishing a Federal customary trade and barter permit, Option 2 would track the exchanges and transactions between rural residents and others for salmon, their parts, or their eggs by implementing a recordkeeping requirement. Those exchanging fish for cash to others would be required to keep a record of these transactions and provide such records to law enforcement officers upon request.

Option 3—Allow unlimited barter for transactions between rural residents and others. Option 3 would be a variation of either Option 1 or Option 2, and arises from concerns that barter between a rural resident and others should not be limited. The Permitting Requirement under Option 1 and the Recordkeeping Requirement under Option 2 would impose limitations on barter involving salmon, their eggs, or their parts between a rural resident and others. Option 3 would remove the restriction on barter by deleting any reference to barter.

Option 4—Provide for regional limitations for exchanges between rural residents and others. This option would include draft regulatory language as proposed by the Federal Subsistence Regional Advisory Councils during their fall 2001 meetings. In some instances, Regional Councils recommended modifying the restrictions on transactions between a rural resident and others for salmon, their parts, or their eggs on a regional basis, while in other instances Regional Councils recommended going forward with the $1,000 limit as recommended by the Task Force. Additionally, for the Bristol Bay and Chignik Areas, the Regional Council proposed to restrict the customary trade between rural residents. The regional language proposed by the Councils could be included with the regulatory language in Option 1, Option 2, Option 3 or Option 5 (with modification).

Option 5—Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except maintain the status quo for transactions between rural residents and others. Through the development and review of draft regulatory language for customary trade by the Task Force and the Regional Advisory Councils, there was general support and consensus for unlimited transactions between rural residents and the prohibition of transactions with fisheries businesses. Many of the concerns raised have been directed at the transactions between a rural resident and others. Option 5 would maintain the status quo for transactions between a rural resident and others, prohibit transactions with State-licensed fisheries businesses, and allow further discussions and analyses to occur before proposing further restrictions on the transactions between a rural resident and others in a proposed rule.

Option 6—Defer publication of a proposed rule to provide more opportunity for informal comment. Option 6 would defer publication of draft regulatory language for customary trade of fish in a proposed rule.

Concerns were raised that significant changes and options (*i.e.* permitting requirement or recordkeeping requirement) were developed after the fall meetings of the Regional Advisory Councils and without their full input.

After hearing the report of the Task Force, the six options, and comments from Regional Council Chairs, ADF&G, Alaska Department of Environmental Conservation, and other members of the public, the Board decided to implement Option 5 and to initiate a formal rulemaking process with this proposed rule.

Because most customary trade among rural subsistence users occurs between local users and involves only small amounts of fish, the Board does not believe that this rule will create an incentive for additional harvest of the resources nor result in additional fish being sold in the commercial markets. Likewise, nothing in this proposed rule would displace, supersede, or preempt State or Federal food and health safety laws and regulations governing the processing, handling, or sale of fish.

There is now the opportunity for further public comment and Regional Council input prior to implementation of a final rule. Additionally, since this rule would occur in subpart D of the Federal Subsistence Management Regulations, it would be subject to annual review and revision as needed or deemed appropriate. This rulemaking will provide a clear mechanism and focus for public comments, either directly to the Board in writing, or orally at their May 2002 meeting or to the Regional Councils during their February/March 2002 meetings. The Board invites comments on this proposed rule, the six options considered by the Board at their December 2001 meeting, and the regional recommendations provided by the Regional Councils. The Board will expand public awareness of this proposed rule and the opportunity to comment through targeted mailouts to interested parties, news releases, additional Tribal consultation, and by posting on the Office of Subsistence Management Web site at *http://www.r7.fws.gov/asm/home.html*. The Board's estimated schedule for this rulemaking is as follows:

- Regional Council meetings including comment on this rule. Feb./Mar. 2002.
- Additional Tribal Consultation on this rule. Feb./Mar. 2002.
- Public comment period ends on this rule. Mar. 29, 2002.
- Federal Subsistence Board deliberation and action on this rule. May 2002.
- Publication of a final rule June 2002.
- Final Rule effective ..... July 1, 2002.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, amended January 8, 1999, 64 FR 1276, and June 12, 2001 66 FR 31533) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These proposed amendments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; however, the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources traded under this rule will be consumed by local rural residents and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: this is actually much higher than the current commercial ex-vessel value for salmon.] and $ 0.58 per pound for other fish, would equate to

about $34 million in food value Statewide. We anticipate that only a very small portion of this harvest might be used in customary trade and most of that would remain in the local village or region.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. For this reason, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

These actions are not significant regulatory actions under Executive Order 12866, nor will they raise novel legal or policy issues.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant adverse effects. During the development of this proposed rule, the Board initiated Tribal consultation with 229 Federally-recognized Tribes. All of the comments that were received were consistent with the Task Force's recommended language. The Board will continue with Tribal consultation during the comment period through directed mailings and special meetings with Tribal entities. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart D—Subsistence Taking of Fish and Wildlife

2. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.27(c)(11) through (13) are revised to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(c) * * *

(11) Transactions Between Rural Residents—The exchange between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted.

(12) Transactions Between a Rural Resident and Others—Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

(13) No Purchase By Fisheries Businesses—If you are required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter for, subsistence-taken fish, their parts, or their eggs.

* * * * *

Dated: January 15, 2002.

Timothy R. Jennings,

Acting Chair, Federal Subsistence Board.

Calvin H. Casipit,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 02–4540 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–P 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 250–0317b; FRL–7145–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning, prescribed burning, and hazard reduction burning. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 29, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local SJVUAPCD Rules 4103 and 4106. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 31, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4527 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD121–3082b; FRL–7144–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland Nitrogen Oxide Averaging Plan for Constellation Power Source Generation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland on April 25, 2001 for the purpose of establishing an inter-facility averaging plan for emissions of nitrogen oxides (NO_X) at facilities located in Maryland that are owned by Constellation Power Source Generation Inc. The SIP revision consists of a Consent Order issued to Constellation Power Source Generation Inc. establishing a system-wide emissions averaging plan to comply with the applicable NO_X reasonably available control technology (RACT) requirements for 10 boiler units located at five different electric generating facilities owned by Constellation Power Source Generation Inc. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 29, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: David L. Arnold (215) 814–2172, at the EPA Region III address above, or by e-mail at *arnold.david@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information about the Constellation Power emissions averaging plan, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: February 7, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–4524 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7150–1]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Delaware has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant such Final authorization to Delaware. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial, and we do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule, and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by March 29, 2002.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5454. You may examine copies of the materials submitted by Delaware during normal business hours at the following locations: Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89 Kings Highway, Dover, DE 19901, Phone

Number (302) 739–3689, attn: Karen J'Anthony; or EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 15, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–4529 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–317, MM Docket No. 02–29, RM–10372]

Digital Television Broadcast Service; Bowling Green, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bowling Green State University, licensee of noncommercial educational station WBGU-TV, NTSC channel *27, Bowling Green, Ohio, proposing the substitution of DTV channel *20 for DTV channel *56. DTV Channel *20 can be allotted to Bowling Green, Ohio, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–08–13 N. and 83–54–23 W.). Since the community of Bowling Green is within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtain for this allotment. As requested, we propose to allot DTV Channel *20 to Bowling Green with a power of 200 and a height above average terrain (HAAT) of 320 meters.

DATES: Comments must be filed on or before April 8, 2002, and reply comments on or before April 23, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks, LLP, Suite 300, 1920 N Street, NW, Washington, DC 20036–1622 (Counsel for Bowling Green State University).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–29, adopted February 8, 2002, and released February 14, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Ohio is amended by removing DTV Channel *56 and adding DTV Channel *20 at Bowling Green.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–4578 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 021902F]

RIN 0648–AO62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium

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

ACTION: Notice of availability of an amendment for a charter vessel/headboat permit moratorium; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted to NMFS an amendment for a charter vessel/headboat permit moratorium amending the fishery management plans (FMPs) for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and the Reef Fish Resources of the Gulf of Mexico (Amendment 20) for review, approval, and implementation. Amendments 14 and 20 would establish a 3–year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery and coastal migratory pelagics fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico. In addition, as a consequence of the proposed moratorium, the current charter vessel/headboat permit for coastal migratory pelagic fish would have to be restructured as separate permits for the Gulf and South Atlantic. Written comments are requested from the public.

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

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may

also be sent via fax to 727 522 5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendments 14 and 20, which include an environmental assessment, a regulatory impact review, and copies of two related minority reports opposing implementation of the proposed moratorium may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–833–1844.

Written comments regarding the collection-of-information (e.g. permits) requirements contained in Amendments 14 and 20 may be submitted to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Written comments regarding all other actions set forth in the amendment may be submitted to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727 570 5305; fax 727 570 5583; e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit an FMP or FMP amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a document in the **Federal Register** stating that the FMP or FMP amendment is available for public review and comment.

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendments 14 and 20 to address issues of increased fishing mortality and fishing effort in the for-hire sector of the recreational fishery. There are an estimated 3,220 recreational for-hire vessels in the Gulf of Mexico. Of these for-hire vessels, there are an estimated 1,275 charter vessels and 92 headboats; the remainder are probably smaller guide boats that usually fish inshore. The number of charter boats operating in the Gulf of Mexico has increased from 516 in 1981 to 1,275 in 1998 (147 percent), while the number of headboats has remained relatively stable during the same period. Further, the number of individual angler charter vessel trips increased by approximately 51 percent (through 1998) over the average number of trips from the previous decade.

During this same period, there has been an increase in the number of fish stocks identified as overfished or approaching an overfished state. In the January 2001 report to Congress on the Status of U.S. Fisheries, red snapper and red grouper were classified as being overfished and undergoing overfishing. Gag grouper was classified as undergoing overfishing and approaching an overfished state. King mackerel was classified as overfished and vermillion snapper was classified as undergoing overfishing. Further, the Council was notified by a letter from NMFS in January, 2001 that greater amberjack was overfished.

While all sectors have contributed to the overfishing or overfished status of these important fisheries, the proportion of landings attributed to the for-hire sector has increased substantially in recent years. The number of recreational red grouper landed by charter vessel and headboats increased from 14 percent (1988/1989) to 32 percent (1996 1997) of the total landings; the number of recreational red snapper landed increased from 34 percent (1981 1982) to 62 percent (1988 1989) to 71 percent (1996 1997) of the total landings. These increased catch rates by the recreational for-hire sector have contributed to the progressively earlier closures of the red snapper recreational fishery each year. This fishery was closed on November 27 in 1997, September 30 in 1998, and August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel headboat sector that is dependent on this stock. Additionally, the number of king mackerel landed by charter vessel and headboats increased from 17 percent in 1983 to 62 percent of the total landings in 1997. During the same period, landings for gag grouper increased from approximately 15 percent to 33 percent. Further, the recreational for-hire vessels historically have landed most of the recreational landings of vermillion snapper (90 percent) and greater amberjack (63 percent) during the period 1995/1996.

Amendments 14 and 20 would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality in the for-hire sector of the recreational fishery. The proposed moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. A large part of the considerations of whether a more comprehensive system is needed will be the determination of actions needed to restore the aforementioned overfished stocks.

A proposed rule that would implement measures outlined in Amendments 14 and 20 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by April 29, 2002 whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 21, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–4672 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 021902D]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings/public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council)and its Scientific and Statistical Committee (SSC) will meet in March (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The SSC meeting will be held in the Council conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220. The Council meeting and the hearings will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Locations

Scientific and Statistical Committee

The SSC will meet Tuesday, March 12 through 14, 2002, from 8:30 a.m. to 5 p.m. Public comment periods will be provided throughout the meeting. The order in which agenda items are addressed may change. The SSC will meet as late as necessary to complete scheduled business.

The agenda for the SSC will include the items listed here:

1. Introductions
2. Approval of draft agenda and assignment of rapporteurs
3. Approval of the minutes of the 78th meeting
4. Crustaceans fisheries (NWHI lobsters)
   A. Report on the modeling workshop
5. Bottom Fisheries
   A. Research
   (i) Acoustic research
   (ii) Ulua/other species tagging
   B. Report on main Hawaiian Islands (MHI) bottomfish area closures
   C. NWHI amendment to adjustment permit renewal criteria
6. Hawaiian Monk Seals
   A. Quarterly report on activities of the Marine Mammal Recovery Plan (MMRP)
   (i) Update on the population status/ monitoring efforts
   (ii) Update on new/ongoing research
   (iii) Findings from the foraging ecology workshop
   (iv) Results from the shark culling project in the NWHI
   B. Report on the progress of the recovery team meeting
   C. Update on the satellite tagging of great white sharks
7. Pelagic Fisheries
   A. 4th quarter 2001 Hawaii and American Samoa longline fishery reports
   B. Options for managing Cross Seamount/NOAA weather buoy fishery
   C. American Samoa
   (i) Closed area final rule
   (ii)Limited entry program
   D. Sea turtle conservation and management
   (i) Workshop and findings
   (ii) Sea turtle research
   (a) Section 10 permitted Honolulu lab mitigation research
   (b) Honolulu Lab turtle population modeling workshops
   (c) Estimated incidental catches of turtles in Hawaii longline fishery
   (iii) FMP regulatory amendment implementing turtle Biological Opinion/ New Biological Opinion
   (iv) Implementation status of Pacific sea turtle recovery plan action items
   E. Seabird conservation and management
   (i) Underwater setting chute deployment in Hawaii longline fishery
   (ii) Update on seabird breeding populations in the Western Pacific Region
   (iii) Update on U.S. Geological Service demographic modeling of North Pacific Albatross populations
   (iv) Estimated incidental catches of seabirds in Hawaii longline fishery
   (v) FMP regulatory amendment implementing Short-tail albatross Biological Opinion
   (vi) Update on National Plan of Action requirements
   F. Redrafting of Amendment 9 to the Pelagic Fishery Management Plan for shark management measures
   G. Report on International Meetings Co Interim Scientific Committee (ISC) for tuna and tuna-like species in the North Pacific Ocean prepatory conference, Pelagic fisheries research program protected species modeling workshop
8. Precious Corals Fisheries
   A. Report on research at Makapu'u
9. Ecosystem and Habitat
   A. Inclusion Amendment EFH alternative, final meeting
   B. State of Hawaii NWHI fishery management area regulatory proposal
   C. Reef fish stock assessment workshop
   D. Marine Protected Area (MPA)related studies
   E. MPA working group report
10. Other Business
   A. Comprehensive Sustainable Fisheries Act (SFA) amendments for bycatch, overfishing and communities
   B. NMFS cooperative research
   C. Council/NMFS long term research planning for Western Pacific Region
   D. New NMFS Pacific Islands Region
   E. Council's 5 year program plan
11. Summary of Recommendations to Council
12. SSC meeting Schedule for 2002

Public Hearings

Public hearings will be held at 4 p.m. on Tuesday, March 19, 2002, for final action on inclusion amendment to consider EFH alternatives; at 11 a.m. on Wednesday, March 20, 2002, for initial action adjustment to NWHI bottomfish annual landing requirements; at 5 p.m. on Wednesday, March 20, 2002, for American Samoa limited entry and Cross Seamount management options; and at 3 p.m. on Thursday, March 21, 2002, for final action on revisions to the comprehensive SFA amendment that will define overfishing, bycatch and communities.

Committee Meetings

The following Standing Committees of the Council will meet on March 18, 2002. Enforcement/Vessel Monitoring System (VMS) from 8 a.m. to 10 a.m.; Fishery Rights of Indigenous People from 9 a.m. to 10 a.m.; International Fisheries/Pelagics from 10 a.m. to 12 noon; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; Research from 4:30 to 6 p.m. and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its advisory panels, plan teams, SSC, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

The agenda during the full Council meeting will include the items listed here:

1. Introductions
2. Approval of agenda
3. Approval of 111th meeting minutes
4. Island reports
   A. American Samoa
   B. Guam
   C. Hawaii
   D. CNMI
5. Federal fishery agency and organization reports
   A. Department of Commerce
   (1) NMFS
   (a) Southwest Region, Pacific Islands Area Office
   (b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
   (2) NOAA General Counsel, Southwest Region
   (3) National Ocean Service NWHI sanctuary designation
   B. Department of the Interior/U.S. Fish and Wildlife Service
   C. U.S. State Department
6. Enforcement/Vessel monitoring systems (VMS)
   A. Report on U.S. Coast Guard activities
   B. Report on NMFS activities
   C. Commonwealth, Territories and State Activities

D. Status of violations
E. Report on VMS/Enforcement meeting
7. Ecosystems and Habitat
A. Report on the status of the Coral Reef Ecosystems Fishery Management Plan
B. State of Hawaii NWHI fishery management area regulatory proposal/ Memorandum of Agreement
C. EFH Final Rule
D. EFH Consultation update
E. EFH alternatives requirements for new bottomfish species
F. Invasive Species
(i) Major Issues
(ii) Discussion of potential mitigation measures
G. MPAs
(i) MPA related studies
(ii) MPA working group report
H. Vessel Grounding Workshop report
I. Public Hearing

The Council will hold a public hearing on an amendment to include as managed areas, CNMI and the PRIAs exclusive economic zone (EEZ), under the Fishery Management Plans (FMP) for Crustaceans, Bottomfish and Seamount Groundfish, and Precious Corals Fisheries of the Western Pacific Region. The amendment will allow fishery management measures under these FMPs to be applied in these areas.

The amendment will also designate 49 additional management unit species for the Bottomfish and Seamount Groundfish FMP. The inclusion of these species will provide for a more accurate representation of the species currently being harvested by bottomfish fisheries operating in the Western Pacific Region. EFH for these new species will also be designated by this amendment.

8. Crustaceans Fisheries
A. Report on the modeling workshop
B. Status of Draft Environmental Impact Statement and Biological Opinion
9. Precious Corals Fisheries
A. November 2001 Research at Makapu'u
B. Status of framework measures
10. Guest Speaker: Eldon Hout Co NOAA Services
11. Observer Program
A. NMFS Pacific Islands Area Office
(i) Bottomfish
(ii) American Samoa
(iii) Hawaii longline
B. Native Observer Program
12. Hawaiian Monk Seals
A. Status of revised recovery plan, delisting criteria and recovery team
B. MMRP quarterly report
(i) Update on the population status/ monitoring efforts
(ii) Update on new/ongoing research
(iii) Findings from the foraging ecology workshop
(iv) Results from the shark culling project in the NWHI
(v) Update on Hawaiian monk seal models
C. Update on the satellite tagging of great white sharks
13. Bottomfish Fisheries
A. NWHI Framework Action: adjustment to landing requirements
B. Status of Biological Opinion and Draft Environmental Impact Statement
C. Report on MHI area closures
D. Acoustics research
E. Public hearing

The Council will consider an amendment to its Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region to modify the annual landing requirements or permit renewal and prohibitions on the lease and charter of permits from the NWHI Ho'omalu and Mau zone management regimes. The Council expects that these adjustments will best address the key objectives to maintain opportunities for small scale fisheries, maintain availability of high-quality fresh bottomfish, and balance harvest capacity with harvestable fishery stocks. The basic approach is to structure the permit system so that evidence of participation is used for new entry and the total number of permits are maintained at target levels.

14. Fishery rights of indigenous peoples
A. Marine conservation plans
B. Report on Community demonstration projects
C. Community development program
15. Pelagic Fisheries
A. 4th quarter 2001 Hawaii and American Samoa longline reports
B. American Samoa longline fishery management
(i) Closed area final rule
(ii) Limited entry program
C. Options for managing Cross Seamount/NOAA weather buoy fishery
D. Public hearing

The Council will hold a public hearing on American Samoa limited entry and Cross Seamount management options. The number of fishing vessels participating in the American Samoa longline fishery doubled in 2001, and the level of fishing effort in terms of hooks set quadrupled. The new entrants comprised mainly large conventional longliners which are fifty feet or larger, as opposed to the small 30-40 ft (9.144-12.192 m)outboard-powered alia-catamarans with hand deployed longline gear with which the American Samoa fishery originated.

In 2002 the Council implemented a 50 nm-area closure around the American Samoa islands which excludes longline vessels larger than 50 ft (15.2 m). However there are concerns about unconstrained entry of fishing vessels into the American Samoa fishery. Unlike Hawaii, fishing vessels in the American Samoa fishery are confined to fishing within the EEZ, and gear conflict and competition for resources are likely to increase as the level of fishing increases. Consequently, the Council is developing a limited entry program for the fishery, and this will be the initial Council meeting in the fishery management plan amendment process at which alternatives will be discussed and comments solicited from the public.

The offshore tuna handline fishery in Hawaii, based primarily on the Cross Seamount, continues to generate concerns due to the high volume of juvenile yellowfin and bigeye tunas caught at this location, and its effects on tuna stocks around Hawaii. Handline fishermen using the Cross Seamount have in the past expressed concerns about longline vessels fishing in the same location, due to gear interactions and safety at-sea issues. Concerns were also expressed about uncontrolled entry into the handline fishery by longline vessels displaced by recent management measures imposed on the Hawaii-based longline fishery.

The Council responded in part by implementing a new control date for the fishery of July 15, 2000. More recently, the downturn in the economy may lead to an increase in the level of new entrants into to the Cross Seamount fishery from other fishery sectors. The Council wants to consider management options for the Cross Seamount for the various fisheries that participate in fishing at this location. The Council will prepare an options paper for consideration at the 112th Council meeting and take comments from the public on the options therein. The Council may wish to proceed with the development of management alternatives for fisheries that make use of the Cross Seamount and request that this topic be placed on the agenda for the next Council meeting.

E. Litigation
F. Sea turtle conservation and management
(i) Cooperative sea turtle research and conservation workshop
(ii) Research (progress since October 2001)
(a) Status of field experiments to reduce longline turtle bycatch
(b) Laboratory research to reduce longline turtle bycatch
(c) Turtle population biology workshops
(d) Estimated incidental catches of turtles in Hawaii longline fishery

(iii) FMP regulatory amendment implementing turtle Biological Opinion
(iv) Implementation status of Pacific sea turtle recovery plan action items
G. Seabird conservation and management
(i) Underwater setting chute deployment in Hawaii longline fishery
(ii) Estimated incidental catches of seabirds in Hawaii longline fishery
(iii) FMP regulatory amendment implementing Short-tail albatross Biological Opinion
(iv) Update on National Plan of Action requirements
H. Sharks
(i) Shark finning regulations final rule
(ii) Redrafting of Amendment 9 to the Pelagic Fishery Management Plan for shark management measures
I. International meetings
(i) ISC
(ii) Second International Fishers Forum
16. Program planning
A. NMFS cooperative research
B. Education initiatives
C. Comprehensive Sustainable Fisheries Amendment (SFA) revisions to define overfishing, bycatch and communities
D. Funding allocations
(ii) Pelagics
E. Hawaiian Islands Humpback Whale National Marine Sanctuary (5 year review)
F. Digital video monitoring pilot project
G. Council/NMFS long term research planning for the Western Pacific Region
H. New NMFS Pacific Island Region
I. NWHI Hokule'a voyage
K. Public hearing on Comprehensive SFA amendment revisions.

In 1998, the Council submitted a comprehensive amendment to all the Council's fishery management plans, which was generated in response to the 1996 re-authorization of the Magnuson-Stevens Act. This amendment received only partial approval. The disapproved sections included maximum sustainable yield and overfishing reference points for bottomfish, crustaceans and pelagics, bycatch provisions for bottomfish and pelagics, and the definition of Hawaii as a single fishing community. The Council has addressed NMFS' concerns about the disapproved sections of the original comprehensive amendment and will solicit public comment prior to taking final action.

17. Administrative Matters
A. Financial reports
B. Administrative report
C. Meetings and workshops

Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305 (c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final 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 Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 22, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–4674 Filed 2–26–02; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 39
Wednesday, February 27, 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.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing 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 burden estimates; (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: Submit comments on or before April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0555.
Form No.: N/A.
Title: Monthly Commodity Status Report/Monthly Recipient Status Report.
Type of Review: Renewal of Information Collection.
Purpose: The Monthly Commodity Status Report/Monthly Recipient Status Report (MCSR/MRSR) allow the Office of Food for Peace (FFP) to track exactly how commodities are distributed. The Cooperating Sponsor submits an Annual Estimate of Requirements (AER) each year. The AER is an estimate of how much food is needed for a specified number of beneficiaries in a particular country. The MCSR/MRSR allows FFP to track the commodities from the amount requested on the AER to what is actually distributed. The MCSR tracks the commodities for each program and the MRSR tracks the number of recipients or beneficiaries reached each month under each FFP program.

Annual Reporting Burden:
Respondents: 20.
Total annual responses: 240.
Total annual hours requested: 480 hours.

Dated: February 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–4619 Filed 2–26–02; 8:45 am]

BILLING CODE 6116–01–M

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing 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 burden estimates; (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: Submit comments on or before April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0557.
Form No.: N/A.
Title: Annual Results Report.
Type of Review: Renewal of Information Collection.
Purpose: The Annual Results Report provide meaningful results-oriented information to assist Cooperating Sponsors, USAID Missions and USAID's Office of Food for Peace to demonstrate the impact of food aid on food security. The report serves as an important information source during preparation of Fiscal Year annual updates prepared by Cooperating Sponsors, new development activity proposals, Agency Results, Review and Resource Requests, and USAID's annual report to Congress. The Annual Results Report focuses on performance indicators for food aid activity and progress toward achievement of results. The report also includes a summary of anticipated resource requests for the next Fiscal Year.

Annual Reporting Burden:
Respondents: 20.
Total annual responses: 20.
Total annual hours requested: 800 hours.

Dated: February 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–4620 Filed 2–26–02; 8:45 am]

BILLING CODE 6116–01–M

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other

Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing 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 burden estimates; (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: Submit comments on or before April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0556.

Form No.: N/A.

Title: Monetization Report.

Type of Review: Renewal of Information Collection.

Purpose: The Monetization Report is used to help the U.S. Agency for International Development (USAID) Missions determine the status of the commodities monetized by the Cooperating Sponsors under the Public Law 480 title II program. The Monetization Profile provides USAID Missions with a checklist of important questions about the Cooperating Sponsors' monetization transactions. The Cooperating Sponsors verify the Free Along-side Ship (FAS) price quotation that has been provided by USAID's Office of Food for Peace, the foreign flag estimate or rate, the sales price obtained, and the method for which the commodities have been sold. All of this information is necessary for USAID Missions to collect verifiable information and to determine that Cooperating Sponsors are meeting USAID's cost recovery benchmark.

Annual Reporting Burden:

Respondents: 20.

Total annual responses: 20.

Total annual hours requested: 240 hours.

Dated: February 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–4621 Filed 2–26–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: National School Lunch Program Application/ Verification Pilot Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a new activity.

DATES: Written comments must be submitted on or before April 29, 2002.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Paul J. Strasberg, Social Science Research Analyst, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OJMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed by mail to Paul J. Strasberg, Social Science Research Analyst, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or by phone (703) 305–2141.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the National School Lunch Program Application/ Verification Pilot Projects.

OMB Number: Not yet issued.

Expiration Date: Three years from date of issuance.

Type of Request: New.

Abstract: Approximately 20 School Food Authorities (SFAs) are operating National School Lunch Program (NSLP) Application/Verification Pilot Projects. The purpose of these projects is discussed in a **Federal Register** Notice published on January 21, 2000 (65 FR 3409). These projects require participating SFAs to use alternative methods those specified in 7 CFR 245.6 to determine eligibility for free and reduced-price school meals. The Food and Nutrition Service (FNS) is operating these pilot projects to explore the effects of methods being tested on children that attend NSLP schools and SFAs. A contractor will be engaged to provide Advisory and Assistance Services to evaluate the NSLP Application/ Verification Pilot Projects to determine (a) their effect in pilot SFAs on the accuracy of NSLP Free and Reduced Price Lunch Eligibility Determination systems tested in the pilots and (b) their effect on SFAs operating the pilot projects. FNS anticipates the contractor will conduct interviews with households with children in NSLP schools and staff at pilot SFAs. FNS anticipates the contractor will review pilot SFA administrative records. The contract to accomplish the above work is known as the base contract.

The contract includes an option. Under this option, FNS seeks to determine the Federal Poverty Level of households selected for verification in one to six Metropolitan Areas (MA) as defined by the Office of Management and Budget. Specifically, for a sample of households selected for verification, FNS seeks to learn about the extent to which pre-verification F/RP certifications correspond to household income and family size.

Affected Public: 30 School Food Authorities, 3000 households.

Estimated Number of Respondents: 2 staff members at each of 30 School Food Authorities and 1 individual within each of 3000 households.

Number of responses per respondent: 1.

Estimated total annual responses: 3060.

Hours per response: 1 hour per SFA staff member; 30 minutes per household.

Total annual reporting hours: 1,560.

Dated: February 19, 2002.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–4557 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 2002 through June 30, 2003. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs that are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2002 through June 30, 2003. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2002 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar. The numbers reflected in this notice for a family of four represent an increase of 2.55 % over the July 2001 numbers for a family of the same size.

Authority: (42 U.S.C. 1758(b)(1)).

Dated: February 19, 2002.

George A. Braley,

Acting Administrator.

BILLING CODE 3410–30–U

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2002 to June 30, 2003)

Household size	Federal Poverty Guidelines			Reduced Price Meals - 185%			Free Meals - 130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	8,860	739	171	16,391	1,366	316	11,518	960	222
2	11,940	995	230	22,089	1,841	425	15,522	1,294	299
3	15,020	1,252	289	27,787	2,316	535	19,526	1,628	376
4	18,100	1,509	349	33,485	2,791	644	23,530	1,961	453
5	21,180	1,765	408	39,183	3,266	754	27,534	2,295	530
6	24,260	2,022	467	44,881	3,741	864	31,538	2,629	607
7	27,340	2,279	526	50,579	4,215	973	35,542	2,962	684
8	30,420	2,535	585	56,277	4,690	1,083	39,546	3,296	761
For each add'l family member add	+3,080	+257	+60	+5,698	+475	+110	+4,004	+334	+77
ALASKA									
1	11,080	924	214	20,498	1,709	395	14,404	1,201	277
2	14,930	1,245	288	27,621	2,302	532	19,409	1,618	374
3	18,780	1,565	362	34,743	2,896	669	24,414	2,035	470
4	22,630	1,886	436	41,866	3,489	806	29,419	2,452	566
5	26,480	2,207	510	48,988	4,083	943	34,424	2,869	662
6	30,330	2,528	584	56,111	4,676	1,080	39,429	3,286	759
7	34,180	2,849	658	63,233	5,270	1,217	44,434	3,703	855
8	38,030	3,170	732	70,356	5,863	1,353	49,439	4,120	951
For each add'l family member add	+3,850	+321	+75	+7,123	+594	+137	+5,005	+418	+97
HAWAII									
1	10,200	850	197	18,870	1,573	363	13,260	1,105	255
2	13,740	1,145	265	25,419	2,119	489	17,862	1,489	344
3	17,280	1,440	333	31,968	2,664	615	22,464	1,872	432
4	20,820	1,735	401	38,517	3,210	741	27,066	2,256	521
5	24,360	2,030	469	45,066	3,756	867	31,668	2,639	609
6	27,900	2,325	537	51,615	4,302	993	36,270	3,023	698
7	31,440	2,620	605	58,164	4,847	1,119	40,872	3,406	786
8	34,980	2,915	673	64,713	5,393	1,245	45,474	3,790	875
For each add'l family member add	+3,540	+295	+69	+6,549	+546	+126	+4,602	+384	+89

[FR Doc. 02-4589 Filed 2-26-02; 8:45 am]
BILLING CODE 3410-30-C

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Mt Baker-Snoqualmie Resource Advisory Committee (RAC) will meet twice during the months of March and April 2002. The first meeting is scheduled for Thursday, March 14 at the Skagit County Hearing Room B, 700 South 2nd St., in Mt. Vernon, WA 98273. The second meeting is scheduled for Thursday, April 11, 2002, at the Whatcom Civic Center Building, 322 North Commercial Ave., in Bellingham, WA 98225.

The focus for the March 14th meeting will be the review of projects under consideration for Title II funding under the Secure Rural Schools and Community Self-Determination Act of 2000. The objective of the April 11th meeting will be to continue the project selection process including submission of a prioritized list to the designated Federal Official (Mt. Baker-Snoqualmie National Forest Supervisor) for approval.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, review project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington, 98284 (360–856–5700, Extension 201).

Dated: February 20, 2002.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 02–4582 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will be meeting on Wednesday, March 13, 2002, and Wednesday, March 27, 2002, at the Snohomish County Administration Building, Willis Tucker Conference Room (3rd floor), 3000 Rockefeller Ave. in Everett, WA 98201.

Both meetings will begin at 9 a.m. and continue until about 4 p.m. Agenda items to be covered at both meetings include: (1) Forest Service land allocations, (2) Title II project criteria, and (3) Title II project evaluation.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Hwy, PO Box 305, Skykomish, WA 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: February 21, 2002.

Larry Donovan,

Acting Designated Federal Official.

[FR Doc. 02–4583 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Multi-Purpose Application.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0088.

Type of Request: Extension of a currently approved collection of information.

Burden: 12,729 hours.

Average Time Per Response: 40 to 67 minutes per response.

Number of Respondents: 14,137 respondents.

Needs and Uses: This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: February 22, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–4638 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations—Petroleum Products.

Agency Form Number: None.

OMB Approval Number: 0694–0026.

Type of Request: Extension of a currently approved collection of information.

Burden: 1 hour.

Average Time Per Response: 30 to 60 minutes per response.

Number of Respondents: 1 respondents.

Needs and Uses: The Naval Petroleum Reserves Production Act (NPRPA) of 1976, 10 U.S.C. 7420 and 7430 (e), restricts the export of any petroleum product produced from crude oil derived from the Naval Petroleum Reserves (NPR). Under section 754.3(b) of the Export Administration Regulations (EAR), applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum reserves produced or derived commodity, other than crude oil, will be denied unless the President makes a finding required under the Naval Petroleum Reserves Production Act (10 U.S.C. 7430). To date, the President has not made any national interest findings that would allow exports under this statute.

Needs and Uses:

This information collection requires the submission of a license application for the export of petroleum products that are listed in Supplement No. 1 of Section 754 of the Export Administration Regulation. These petroleum products are produced or derived from crude oil or the Naval Petroleum Reserves.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Róstker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: February 22, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–4639 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Import Certificates and End-User Certificates.

Agency Form Number: None.

OMB Approval Number: 0694–0093.

Type of Request: Extension of a currently approved collection of information.

Burden: 1,957 hours.

Average Time Per Response: 16 to 62 minutes per response.

Number of Respondents: 6,900 respondents.

Needs and Uses: Import or End-User Certificates are an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the items covered by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BXA. This collection of information also contains a recordkeeping requirement and a reporting requirement that involve Import or End-user Certificates as supporting documentation accompanying an application for an export license (approved by OMB under control no. 0694–0088).

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: February 22, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–4640 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on March 26, 2002, 9 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Update on the Wassenaar Arrangement.
5. Status on specially designed entries in the Commerce Control list (CCL).
6. Status on Category 2 Matrix Guide for CCL users.

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 30, 2001, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 21, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–4623 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Notice of Extension of Time Limit for New Shipper Reviews

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

ACTION: Notice of Extension of Time Limit.

EFFECTIVE DATE: February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and the final results within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend these deadlines to a maximum of 300 days and 150 days, respectively.

Background

On January 24, 2001, the Department published a notice of initiation of new shipper antidumping duty reviews of TRBs from the PRC, covering the period June 1, 2000 through November 30, 2000 (66 FR 8385) for Yantai Timken Company Limited and Peer Bearing Company – Changshan ("CPZ"). On May 9, 2001, the Department expanded CPZ's period of review to January 31, 2001. On November 29, 2001, the Department published its preliminary results. See 66 FR 59569 (November 29, 2001). In our notice of preliminary results, we stated our intention to issue the final results of these reviews by no later than 90 days from the issuance of the preliminary results.

Extension of Time Limits for Preliminary Results

Due to the complexity of certain issues, such as market–economy inputs and a request for a changed circumstances review, the Department concludes that these reviews are extraordinarily complicated. Therefore, the Department is extending the time limit for completion of these final results to not later than March 5, 2002, in accordance with section 751(a)(2)(B)(iv) of the Act.

This extension is in accordance with section 751(a)(2)(B) of the Act.

February 19, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 02–4534 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–828

Antidumping Duty Order: Welded Large Diameter Line Pipe from Mexico

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

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: February 27, 2002

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed at 202–482–1382, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("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 regulations at 19 CFR part 351 (2001).

Background

On January 4, 2002, the Department issued its final determination in the antidumping duty investigation of welded large diameter line pipe from Mexico. See Notice of Final Determination of Sales At Less Than Fair Value: Welded Large Diameter Line Pipe, 67 FR 566 (January 4, 2002) ("Final Determination").

On February 19, 2002, the International Trade Commission ("ITC") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less–than–fair–value imports of subject merchandise from Mexico.

Scope of the Investigation

The product covered by this investigation is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications.

Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe, and the following size/grade combinations of line pipe:

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750

inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.

• Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.

• Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.

• Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.

• Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

The product currently is classified under U.S. Harmonized Tariff Schedule ("HTSUS") item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department is directing Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of welded large diameter line pipe from Mexico. The antidumping duties will be assessed on all unliquidated entries of welded large diameter line pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after August 15, 2001, the date on which the Department published its notice of preliminary determination in the Federal Register. See Notice of Final Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe From Mexico, 67 FR 566, (January 4, 2002). On or after the date of publication of this notice in the Federal Register, customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted–average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject merchandise from Mexico. The weighted–average dumping margins are as follows:

Exporter/Manufacturer	Weighted–Average Margin
Productora Mexican de Tuberia, S.A. de C.V.	49.86
Tubacero, S.A. de C.V.	49.86
All Others	49.86

This notice constitutes the antidumping duty order with respect to welded large diameter line pipe from Mexico. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department of Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

February 22, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–4841 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–024. Applicant: Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815–6789.

Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for the study of the Drosophilia neuromuscular junction and optic lobe, and rodent and human tissues. Of interest is the process by which snyaptic vesicles are synthesized, fuse with the plasma membrane, release their contents and are recycled within the nerve cell. Several neurodegenerative diseases using mouse models of specific human diseases including Spinocerebral ataxia and Rett Syndrome will also be studied. *Application accepted by Commissioner of Customs:* November 16, 2001.

Docket Number: 01–026. *Applicant:* Emory University, Department of Pharmacology, Room 5160, W Rollins Center, 1510 Clifton Road, Atlanta, GA 30322. *Instrument:* High Speed CCD Camera System Set, Model MiCAM 01. *Manufacturer:* SciMedia Ltd., Japan.

Intended Use: The instrument is intended to be used in experiments to study stroke and ischemia involving protease-activated-receptors (PAR). The instrument will allow direct testing where the PARs are located in the brain and the effect of activation. *Application accepted by Commissioner of Customs:* December 10, 2001.

Docket Number: 00–027. *Applicant:* University of Cincinnati, 3125 Eden Avenue, PO Box 670521, Cincinnati, OH 45267–0521.

Instrument: Electron Microscope, Model JEM–1230. Manufacturer: JEOL, Ltd, Japan.

Intended Use: The instrument is intended to be used in the following experiments:

(1) Using immunocytochemical methods at the ultrastructural level, the normal cellular distribution of known trafficking molecules, and their altered localization in Hermansky-Pudlak Syndrome cell lines will be assessed.

(2) To determine whether transgenic techniques designed to interrupt the cytoskeleton were successful in disrupting the structure of the intermediate filament component of the cytoskeleton.

(3) Circadian transplant studies to confirm that graft efferents actually establish synaptic contacts with host brain regions among animals exhibiting different patterns of behavioral recovery.

(4) Studies on transgenic mouse lines in which the endogenous surfactant protein B (SP–B) gene has been inactivated and replaced with a human transgene encoding a deleted/mutated SP–B proprotein.

Application accepted by Commissioner of Customs: December 28, 2001.

Docket Number: 02–001. *Applicant:* University of Vermont, Department of Orthopaedics, Burlington, VT 05405. *Instrument:* Upgrade for X-ray based Motion Analysis System. *Manufacturer:* RSA BioMedical Innovations AB, Sweden. *Intended Use:* The instrument is intended to be used to make measurements of the biomechanical behavior of different joints of the body and to study different types of joint trauma, surgical repair, and healing responses. *Application accepted by Commissioner of Customs:* January 22, 2002.

Docket Number: 02–002. *Applicant:* Fox Chase Cancer Center, 7701 Burholme Avenue, Philadelphia, PA 19111. *Instrument:* Electron Microscope, Model Tecnai 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study biological materials including nucleic acids, proteins, organelles, cultured cells, and tissues prepared for electron microscopy. Specifically, studies of ultrastructure and the intracellular localization and trafficking of biologically important molecules including chromatin, structures critical to the regulation of DNA replication, cytokinesis, and meiosis, products of oncogene and tumor suppressor genes, and viral components. *Application accepted by Commissioner of Customs:* January 22, 2002.

Docket Number: 02–003. *Applicant:* Albert Einstein College of Medicine of Yeshiva University, 1300 Morris Park Avenue, Bronx, NY 10461. *Instrument:* Electron Microscope, Model Tecnai 20. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study the structure of biological macromolecular complexes and to determine the 3-dimensional structure of the cytoskeleton of normal metastatic mammalian cells and the mechanism of intracellular transport and cell movement. *Application accepted by Commissioner of Customs:* January 22, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–4669 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Scripps Research Institute; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–022. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model Tecnai F20T. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 2196, January 16, 2002. *Order Date:* March 30, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–4667 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Georgia, Athens: Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–023. *Applicant:* University of Georgia, Athens, GA 30602–2403. *Instrument:* Electron Microscope, Model Tecnai 20. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 4393, January 30, 2002. *Order Date:* May 11, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–4668 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to China, April 21–25, 2002

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to announce Secretary Evans' business development mission to China during April 21–25, 2002.

SUMMARY: Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to Beijing and Shanghai, China, on April 21–25, 2002, in conjunction with the 14th session of the U.S.-China Joint Commission on Commerce and Trade (JCCT) to be held in Beijing the week of

April 21, 2002. The focus of the mission will be to help U.S. businesses explore trade and investment opportunities resulting from China's accession to the World Trade Organization (WTO) and related economic changes. The delegation will include approximately 15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, the following key growth sectors: information technology, telecommunications, clean energy and environmental technology, medical products, and construction equipment and services.

DATES: Applications should be submitted to the Office of Business Liaison by March 15, 2002. Applications received after that date will be considered only if space and scheduling constraints permit.

CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, D.C. 20230; Tel: (202) 482–1360; Fax: (202) 482–4054

SUPPLEMENTARY INFORMATION:

Secretarial Business Development Mission to China

April 21–25, 2002.

Mission Statement

I. Description of the Mission

Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to Beijing and Shanghai, China, on April 21–25, 2002, in conjunction with the 14th session of the U.S.-China Joint Commission on Commerce and Trade (JCCT) to be held in Beijing the week of April 21, 2002. The focus of the mission will be to help U.S. businesses explore trade and investment opportunities resulting from China's accession to the World Trade Organization (WTO) and related economic changes. The delegation will include approximately 15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, the following key growth sectors: information technology, telecommunications, clean energy and environmental technology, medical products, and construction equipment and services.

The business development mission will highlight the expanding U.S.-China economic and trade relationship as well as reaffirm U.S. Government support of China's economic reforms and free market growth resulting from China's WTO accession.

II. Commercial Setting for the Mission

China is the world's fifth largest trading entity after the United States, the European Union, Japan, and Canada. Chinese officials in mid-January of 2002 announced that the economy grew 7.3 percent in 2001, while direct foreign investment last year reached a record $46.84 billion. In great part due to strong increases in U.S. exports to China, bilateral trade was over $5 billion higher during the first eleven months of 2001 than in 2000. U.S. merchandise exports to China are expected to have approached $20 billion in 2001, an increase of roughly 20 percent over 2000.

China's accession to the WTO is expected to increase U.S.-China trade. New opportunities for U.S. exporters have been created, while a more predictable environment for trade and investment can also be expected. As part of its WTO accession agreement, China is committed to begin a phased opening of its large telecommunications services markets to foreign participation. In addition, increasing demand for computers and other high technology products and services is creating new opportunities for U.S. companies in the information technology (IT) market. China's market for IT hardware, software, and services is expected to grow to $50 billion by 2005 from over $21 billion in 2001. China's WTO commitments also are anticipated to open important new business opportunities for companies in China's medical and healthcare products sector.

China's commitment to environmental protection as a national priority is driving demand for clean energy and other environmental technologies. Clean coal technology, air and water resource management and monitoring, and pollution prevention and control equipment represent several promising areas within these new growth markets. Substantial new demand for construction of housing and other infrastructure projects is also expected in coming years, particularly in light of the upcoming 2008 Summer Olympic Games in Beijing. The importance of the Olympics for business opportunities over the next several years will resonate throughout multiple sectors of the Chinese market.

III. Goals for the Mission

The mission aims to further both U.S. commercial policy objectives and advance specific business interests. The mission will:

- Assist U.S. companies to pursue export and other new business opportunities in China by introducing them to key host government decision-making officials and to potential business partners;
- Assist new-to-market firms to gain access to the Chinese market and to promote new business for U.S. companies already operating in China's changing market; and
- Enhance U.S.-China government-industry dialogue.

IV. Scenario for the Mission

The Business Development Mission will provide participants with exposure to high-level contacts and access to the Chinese market. American Embassy officials and local U.S. businesses will provide a detailed briefing on the economic, commercial and political climate, and current business opportunities. Meetings will be arranged with appropriate government ministers and other senior government officials. In addition, private meetings will be scheduled with potential business partners. Representational events will also be organized to provide mission participants with opportunities to meet China's business and government representatives as well as U.S. business people living and working in China.

Under JCCT auspices, Secretary Evans will meet with his trade counterparts and other senior government officials to encourage market reforms beneficial to the U.S. private sector and discuss various issues of interest and concern. The Secretary will also meet with resident American business representatives.

The Department of Commerce's International Trade Administration will provide logistical support for these activities.

V. Criteria for Participant Selection

The recruitment and selection of private sector participants for this mission will be conducted according to the "Statement of Policy Governing Department of Commerce-Overseas Trade Missions" established in March 1997. Promotion and recruitment will include, but not be limited to, posting on appropriate Departmental home pages, notification in the **Federal Register**, and through distribution of the trade mission statement and further information to national and other trade associations and trade publications. Approximately 15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if

manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to the identified growth sectors;
- Seniority of the representative of the designated company;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business.

An applicant's partisan, political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the China Business Development mission will be made available on or about February 22, 2002. The fee to participate in this mission has not yet been determined, but will be approximately $6,000–$8,000. The fees will not cover travel or lodging expenses, which will be the responsibility of each participant. For additional information on the trade mission or to obtain an application, contact the Department of Commerce Office of Business Liaison at 202–482–1360. Applications should be submitted to the Office of Business Liaison by March 15, 2002, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, D.C. 20230, Tel: (202) 482–1360, Fax: (202) 482–4054, Mission Web Site: *http://www.doc.gov/chinatrademission.*

Dated: February 22, 2002.

Linda M. Conlin,

Assistant Secretary for Trade Development.

[FR Doc. 02–4670 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021102D]

Marine Mammals; File No. 775–1600–02

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Michael Sissenwine, Northeast Fisheries Science Center, National Marine Fisheries Service, Room 312, 166 Water Street, Woods Hole, MA 02543, has been issued an amendment to scientific research Permit No. 775–1600–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 16, 2002, notice was published in the **Federal Register** (67 FR 2198) that an amendment of Permit No. 775–1600, issued March 6, 2001 (66 FR 14135), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit amendment authorizes the permit holder to capture, examine, measure, flipper tag (retain tissue from tagging), apply a "seal hat", and photograph up to 200 gray seal (*Halichoerus grypus*) pups; blood sample 50 of the 200 pups captured; and VHF tag 30 of the 200 pups captured. These activities will occur in coastal Maine and Massachusetts for purposes of stock assessment.

Dated: February 19, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–4671 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021402C]

Marine Mammals; File No. 1021–1658

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Jenifer A. Hurley, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has applied in due form for a permit to take California sea lions (*Zalophus californianus*) and harbor seals (Phoca vitulina) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before March 29, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to obtain up to 10 California sea lions (CSL) and 5 harbor seals (HS) with no more than 8 animals (6 CSL and 2 HS) maintained at any given time. Animals will be obtained from rehabilitation centers, Naval facilities, or aquaria to be used in the research program. All research projects are accomplished through the cooperative assistance of trained marine mammals. The three proposed areas of research focus include physiology research, veterinary medicine, and ocean exploration. First, physiology experiments will be performed in both the laboratory and free release settings in the open ocean, continuing on and building on previous physiology

studies. Different aspects of diving, swimming, and resting physiology will be studied comparatively including metabolism, heart rate, respiratory rate, body temperature, and substrate utilization. Second, the veterinary medicine studies will investigate health issues of marine mammals, including a plan to determine if marine mammals have Helicobacter present in stomach mucous and explore possible antibiotic treatments. Third, for the ocean exploration studies, CSLs will be trained to perform open ocean activities to include carrying cameras for benthic surveys and to assist in nautical archaeology.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 21, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–4673 Filed 2–26–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0003]

Regent International Corporation, Inc., a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabrics Act in the Federal Register in accordance with the terms of 16 CFR 1610.05(d). Published below is a provisionally-accepted Settlement Agreement with Regent International Corporation, Inc., a corporation containing a civil penalty of $75,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 14, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: February 21, 2002.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Regent International Corporation, Inc. (hereinafter, "Regent" or "Respondent"), and the staff of the consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR 1605.13, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. Respondent Regent International Corporation, Inc. is a Subchapter "S" corporation organized and existing under the laws of the State of New York. Regent is located at 1411 Broadway, New York, NY 10018. Regent is a manufacturer and importer of clothing.

II. Allegations of the Staff

4. On March 9, 1996, Regent filed a continuing guaranty with the Commission. The guaranty covered all men's, women's, and children's apparel, excluding sleepwear, for a period of three years. In the guaranty filed by Regent on March 9, 1996, Regent represented that it had performed reasonable and representative testing of its product lines and that its products conformed to the applicable flammability regulations.

5. Throughout October 1996, Regent imported approximately 165,000 of the "Jason Maxwell" sherpa fleece garments, Style Numbers 12142, 12143, 12144, 12145, 12146, 12147,22049, 22050, 22051, 22052, 22053, 22054, 32035, 32036, 32037, 32038, 32039, 32040, 52010, 52011, 52012, and 52013, made from 80% cotton, 20% polyester (hereinafter, "sherpa garments"), for sale to retail customers in the United States.

6. These sherpa garments were subject to the Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR part 1610, issued under section 4 of the FFA, 15 U.S.C. 1193.

7. Because Regent had filed a continuing guaranty with the Commission on March 9, 1996, Regent was required to conduct reasonable and representative testing on the sherpa garments and to maintain the requisite records for three years to support the guaranty under section 8(a) of the FFA, 15 U.S.C. 1197(a) and 16 CFR 1610.37 and .38.

8. Before selling its sherpa garments to its customers, Regent failed to conduct reasonable and representative testing or to verify whether the foreign manufacturer, The Motiff Factory, had conducted reasonable and representative testing on the sherpa garments to support the guaranty under section 8(a) of the FFA, 15 U.S.C. 1197(a) and 16 CFR 1610.37.

9. Regent did not maintain the requisite records to support the guaranty under section 8(a) of the FFA, 15 U.S.C. 1197(a) and 16 CFR 1610.38.

10. On December 30, 1996, J.C. Penney, Regent's largest customer, notified Regent that one of its customers had reported an incident when one of

these sherpa garments ignited when exposed to a flame from a candle. The consumer was not injured.

11. During the first week of January 1997, Regent conducted flammability testing on the sherpa garments. The test results showed that the green and peach checked garments and the green striped and solid pattern garments were dangerously flammable and unsuitable for clothing because of their rapid and intense burning and, therefore, violated the Clothing Standard.

12. On January 3, 1997, Regent agreed to allow J.C. Penney to authorize returns and to remove certain lot numbers of the sherpa garments from the selling floor.

13. At the time Regent notified the Commission of flammability problems regarding the sherpa garments on January 9, 1997, it possessed approximately 8,936 sherpa garments.

14. When requested by the staff in 1997 Regent failed to provide test reports to show that it or someone acting on its behalf had conducted reasonable and representative testing on the sherpa garments before sale to support the guaranty.

15. Respondent knowingly sold, or offered for sale, in commerce, or caused to be transported, in commerce, or sold or delivered for after a sale or shipment in commerce, sherpa garments that it knew or should have known violated the Clothing Standard, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192. A knowing violation of this provision subjects Respondent to civil penalties under section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

16. By failing to conduct reasonable and representative testing or to verify that the foreign manufacturer, The Motiff Factory, had conducted reasonable and representative testing on the sherpa garments and by failing to maintain the requisite records, Respondent knowingly furnished a false guaranty, in violation of section 8(b) of the FFA, 15 U.S.C. 1197(b). A knowing violation of this provision subjects Respondent to civil penalties under section 5(m)(1)(A) of the Federal Trade Commission Act (FTCA), 15 U.S.C. 45(m)(1)(A).

III. Response of Respondent

17. Regent is a small, family-owned garment manufacturer in New York City with approximately thirty employees that has been in business for over thirty years. During these 30 years of business, prior to this one incident in 1996, Regent had never had any of its garments recalled and had never been accused by the Commission of violating any statute or regulation. Nor has Regent been subjected to any other recalls, or has it been accused of violating any statute or regulation since the 1996 incident.

18. Respondent denies the allegations of the staff set forth in paragraphs 4–16 above.

19. Respondent adamantly denies that it knowingly violated the FFA's Clothing Standard and the Guaranty Provisions, and it is settling the matter to avoid the costs of litigation.

20. Regent adamantly denies that the green and peach checked garments and the green striped and solid pattern garments were dangerously flammable and unsuitable for clothing because of their rapid and intense burning and, therefore, violated the Clothing Standard.

21. In November 1995, Regent instructed its manufacturer, The Motif Factory ("Motif"), to begin testing fabrics for washing instructions, flammability, and color fading. In its instructions to Motif, Regent emphasized the importance of the testing being done. Accordingly, Regent further instructed Motif to secure a good testing facility, to ensure that all fabrics have been tested, to begin testing fabrics immediately, and to test fabrics each year. Motif confirmed that it would begin the testing as per Regent's instructions. At some time, Regent was informed that the fabric had passed the testing.

22. On December 30, 1996, J.C. Penney notified Regent of a complaint by one customer about the flammability of one of its sherpa garments. No injury was reported, nor had one occurred. On January 3, 1997, Regent authorized J.C. Penney to stop selling the garments and to accept any returns. On Tuesday, January 7, 1997, Regent informed the Commission of the single report by a consumer and on, January 10, 1997, Regent voluntarily recalled not only the garments that had failed the flammability tests, but also those that had passed the tests. Regent did the recall in this manner in order to minimize customer confusion and to make sure that all the garments were returned.

23. In January 1997, Regent learned for the first time that sherpa is an unusual fabric in that its color impacts flammability. Consequently, reasonable and representative testing, as defined by the Commission, would not indicate that some sherpa garments did not comply with the flammability requirements set forth in the Clothing Standard.

24. Because Regent had responded so effectively and expeditiously to the single report and expeditiously recalled the garments, Regent believed that it would not be subject to civil penalties.

25. Regent adamantly denies that it knowingly furnished a false guaranty with respect to the sherpa garments. Regent specifically denies the allegations set forth in paragraphs 8, 9, 15, and 16, in which the staff claims that Regent failed to conduct reasonable and representative testing on the sherpa garments and to maintain the requisite records to support the continuing guaranty it had filed with the Commission under section 8(a) of the FAA, 15 U.S.C. 1197(a) and 16 CFR 1610.37. As stated above, Regent instructed its manufacturer, The Motif Factory ("Motif"), to begin testing fabrics for washing instructions, flammability, and color fading. In its instructions to Motif, Regent emphasize the importance of the testing being done. Accordingly, Regent further instructed Motif to secure a good testing facility, to ensure that all fabrics have been tested, to begin testing fabrics immediately, and to test fabrics each year. Motif confirmed that it would begin the testing as per Regent's instructions. At some time, Regent was informed that the fabric had passed the testing.

IV. Agreement of the Parties

26. The Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*; and the Federal Trade Commission Act (FFA), 15 U.S.C. 41 *et seq.*

27. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA's Clothing Standard and/or Guaranty Requirements.

28. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1610.05(d). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**.

29. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final

Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA, as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

30. In settlement of the staff's allegations, Respondent agrees to pay a $75,000.00 civil penalty as set forth in the attached Order incorporated herein by reference.

31. The Commission may publicize the terms of this Settlement Agreement and Order.

32. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order.

33. A violation of the attached Order shall subject Respondent to appropriate legal action.

34. The provisions of this Settlement Agreement and Order shall apply to, and be binding upon, Respondent and each of its shareholders, officers, directors, employees, agents, successors, assigns, and representatives, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Respondent Regent International Corporation, Inc.

Dated: February 7, 2002.

Michael Shweky,

Vice President, Regent International Corporation, Inc., 1411 Broadway, New York, NY 10018.

Commission Staff.

Alan H. Schoem,

Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: February 6, 2002.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

In the Matter of Regent International Corporation, Inc., a corporation.

[CPSC Docket No. 02–C0003]

Order

Upon consideration of the Settlement Agreement entered into between Respondent Regent International Corporation, Inc. (hereinafter, "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission"); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Respondent Regent International Corporation, Inc. shall pay to the United States Treasury a civil penalty in the amount of Seventy-five thousand and 00/100 Dollars ($75,000.00) in three (3) installments each. The first payment of Twenty-five thousand and 00/100 dollars ($25,000.00) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, "anniversary date"). The second payment of twenty-five thousand and 00/100 dollars ($25,000.00) shall be paid within one (1) year of the anniversary date. The third payment of twenty-five thousand and 00/100 dollars shall be paid within two (2) years of the anniversary date. Upon the failure of Respondent Regent International Corporation, Inc. to make a payment or upon the making of a late payment by Respondent Regent International Corporation, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 21st day of February, 2002.

By Order of the Commission.

Todd A. Stevenson,

Consumer Product Safety Commission.

[FR Doc. 02–4677 Filed 2–26–02; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

The following patent and patent applications are available for licensing:

U.S. Patent Application Serial No. 09/802,531: METHOD OF MAKING SHAPED PIEZOELECTRIC COMPOSITE TRANSDUCER; filed 8 March 2001.// U.S. Patent Application Serial No. 09/724,402: METHOD AND APPARATUS FOR DIAGNOSING SLEEP BREATHING DISORDERS WHILE A PATIENT IS AWAKE; filed 28 November 2000.//U.S. Patent Application Serial No. 09/632,012: A MAGNESIUM ANODE, SEAWATER/ACID/CATHOLYTE ELECTROLYTE, UTILIZING A PASSADIUM AND IRIDIUM CARBON PAPER CATHODE ELECTROCHEMICAL SYSTEM; filed 28 July 2000.//Patent Cooperation Treaty (PCT) filed 27 November 2001 for DIAGNOSIS OF SLEEP BREATHING DISORDERS, Navy Case Number 83557; and U.S. Patent Number 6,249,762: METHOD FOR SEPARATION OF DATA INTO NARROWBAND AND BROADBAND TIME SERIES COMPONENTS; issued 19 June 2001.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Office of Technology Transfer, Naval Undersea Warfare Center, 1176 Howell St., Newport, RI 02841, telephone (401) 832–8728 or E–Mail at *bausta@npt.nuwc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: February 20, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–4584 Filed 2–26–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

The following patent applications are available for licensing:

U.S. Patent Application Ser. No. 07/857553: AUTOMATIC LOCALIZATION MACHINE; filed on 23 Mar 1992.//U.S. Patent Application Ser. No. 08/457351: A METHOD OF ESTIMATING A TARGET'S POSITION AND VELOCITY FROM PASSIVE DOPPLER; filed on 19 May 1995.//U.S. Patent Application Ser. No. 08/969531: METHOD FOR REDUCING DISTORTION OF UNDERWATER ACOUSTIC SIGNALS; filed on 22 Sep 1997.//U.S. Patent Application Ser. No. 08/645733: HYDROPHONE POSITION LOCATING SYSTEM; filed on 14 May 1996.//U.S. Patent Application Ser. No. 08/861304: MULTIPLE LINE TOWED ARRAY HAVING DRAG FORCE ACTUATED LINE SPREADER; filed on 21 May 1997.//U.S. Patent Application Ser. No. 08/861510: MULTIPLE LINE TOWED ARRAY WITH PULLEY OPERATED LINE SPREADER; filed on 22 May 1997.//U.S. Patent Application Ser. No. 09/685151: CONTROLLED MACRO-ROUGHNESS TO REDUCE SURFACES WAKES AND DRAG; filed on 11 Oct 2000. //U.S. Patent Application Ser. No. 09/685153: LEADING EDGE FIXTURES TO REDUCE SURFACE WAKES AND DRAG; filed on 11 Oct 2000.//U.S. Patent Application Ser. No. 09/685145: RELEASE LINK FOR INTERCONNECTED CABLES; filed on 11 Oct 2000.//U.S. Patent Application Ser. No. 09/688470: AXIAL FIELD PERMANENT MAGNET MOTOR WITH EMBEDDED CONDUCTIVE RADIAL ROTOR BAR; filed on 12 Oct 2000.// U.S. Patent Application Ser. No. 08/114467: MARINE PROPULSOR WITH INTEGRAL COANDA-EFFECT CONTROL SURFACES; filed on 06 Jul 1998.//U.S. Patent Application Ser. No. 09/688473: METHOD AND SYSTEM FOR DETERMINING UNDERWATER EFFECTIVE SOUND VELOCITY; filed on 12 Oct 2000.//U.S. Patent Application Ser. No. 09/685149: DEMODULATION SYSTEM AND METHOD FOR RECOVERING A SIGNAL OF INTEREST FROM A MODULATED CARRIER SAMPLED AT TWO TIMES THE PHASE GENERATED CARRIER FREQUENCY; filed on 11 Oct 2000. //U.S. Patent Application Ser. No. 08/063800: NON-PARAMETRIC RAPIDLY ADAPTIVE POWER LAW DETECTOR; filed on 21 Apr 1998. // U.S. Patent Application Ser. No. 08/226623: DISPERSE, AGGREGATE AND DISPERSE (DAD) CONTROL STRATEGY FOR MULTIPLE AUTONOMOUS SYSTEMS TO OPTIMIZE RANDOM SEARCH; filed on 21 Dec 1998.//U.S. Patent Application Ser. No. 09/541834: LOW COST BOW-DOME ACOUSTIC SENSOR; filed on 03 Apr 2000. //U.S. Patent Application Ser. No. 08/226622: A SLOSHING PROPULSOR AND A FLOW MANAGEMENT DEVICE; filed on 21 Dec 1998.//U.S. Patent Application Ser. No. 09/678878: DEPLOYABLE NOSE FOR AN UNDERWATER VEHICLE; filed on 04 Oct 2000.//U.S. Patent Application Ser. No. 09/912656: ACOUSTIC VECTOR SENSOR; filed on 25 Jul 2001.//U.S. Patent Application Ser. No. 09/520376: TWO-AXIS ISOLATED ROTOR; filed on 06 Mar 2000.//U.S. Patent Application Ser. No. 09/684082: SIDE THRUSTER PERFORMANCE IMPROVEMENT WITH VARIABLE PITCH PROPELLER BLADES; filed on 10 Oct 2000.//U.S. Patent Application Ser. No. 09/562996: POLYMER ELECTROMAGNETIC EJECTION SLOT; filed on 01 May 2000./ /U.S. Patent Application Ser. No. 09/656193: TORPEDO TUBE-SHUTTER PRESSURE RELEASE; filed on 06 Sep 2000.//U.S. Patent Application Ser. No. 09/778990: ELECTRIC MOTOR; filed on 06 Feb 2001.//U.S. Patent Application Ser. No. 09/968397: MISSILE SUPPORT AND ALIGNMENT ASSEMBLY; filed on 01 Oct 2001.//Navy Case No. 76481: METHOD FOR CLUSTER DETECTION IN A SONAR SYSTEM.//Navy Case No. 76482: METHOD FOR INTRA-SENSOR DATA FUSION IN A SONAR SYSTEM.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited may be available from the National Technical Information Service (NTIS), Springfield, VA 22161, for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. To avoid premature disclosure, claims are deleted from the copies of patent applications sold. Requests for copies of unfiled patent applications can be made to the point of contact, below and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Technology Transfer Manager, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841–1703.

Dated: February 20, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–4585 Filed 2–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 19, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: FY 2002 Migrant Education Program Consortium Incentive Grants.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100. Burden Hours: 500.

Abstract: The Migrant Education Program (MEP) Consortium Incentive Grant Program provides grants to state educational agencies that participate in corsortium arrangements with another State or other appropriate entity that reduces the administrative costs associated with operating the MEP and to improve the delivery of services to migratory children whose education is interrupted.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–4350 Filed 2–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Department of Energy Delegation Order

February 19, 2002.

The attached Department of Energy Delegation of Authority Order No. 00–004.00 lists delegations from the Secretary of Energy to the Federal Energy Regulatory Commission. These new delegations make no substantive changes to the authority of the Commission but arrange the delegations in a more logical format.

Magalie R. Salas,

Secretary.

Department of Energy

[Delegation Order No. 00–004.00]

To the Federal Energy Regulatory Commission

1. Delegation

Under the authority vested in me as Secretary of Energy ("Secretary") and pursuant to sections 642 and 402(e) of the Department of Energy Organization Act (Public Law 95–91, 42 U.S.C. 7252) (the "DOE Act"), I delegate to the Federal Energy Regulatory Commission ("Commission") authority to take the following actions:

1.1 On a nonexclusive basis to the Chairman,

A. Administer and manage the Commission's personnel (including members of the Senior Executive Service) as is not otherwise granted the Chairman by statute. This authority delegated to the Chairman for administration and management of the Commission's personnel shall include, but not be limited to:

1. selection and appointment of personnel;

2. performance appraisals and performance appraisal systems;

3. compensation, promotions, awards, and bonuses;

4. reorganizations, transfers of functions, reductions in force, and the standards governing such reductions;

5. removals and disciplinary actions; and

6. training, travel, and transportation.

B. Enter into, modify, administer, terminate, close-out, and take such other action as may be necessary and appropriate with respect to any procurement contract, interagency agreement, financial assistance agreement, financial incentive agreement, sales contract, or other similar action binding the Department of Energy to the obligation and expenditure of public funds or the sale of products and services that are related to the mission of the Commission. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority.

C. Serve as the Head of the Procuring Activity (HPA) for the Federal Energy Regulatory Commission.

D. Appoint Contracting Officers for the Commission.

E. Acquire, manage, and dispose of personal property held by the Commission for official use by its employees or contractors.

F. Approve acquisitions of automatic data processing and telecommunications equipment and services.

1.2 Carry out Part I of the Federal Power Act (Public Law 280, 66th Cong., 2d Sess., as amended), to the extent that such authority is not transferred to, and vested in, the Commission by section 402(a)(1)(A) of the DOE Act, *provided* that this paragraph delegates (A) section 4 of the Federal Power Act to the extent the Commission determines the exercise of such authority is necessary for it to exercise any function transferred to, and vested in, the Commission by this delegation, and (B) section 24 of the Federal Power Act (relating to the granting of entry, location, or other disposition of lands of the United States reserved or classified as power sites).

1.3 Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of Presidential permits authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services. In exercising this authority the Commission is specifically authorized to utilize the authority of the Secretary under Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, and section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(3)) and such other sections of the FPA vested in the Secretary as may be relevant, to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement

and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.

1.4 Implement section 202(a) of the Federal Power Act (relating to dividing the country into regional districts).

1.5 Implement section 203 of the Federal Power Act (relating to the disposition, merger or consolidation of facilities and the acquisition of securities);

1.6 Implement section 204 of the Federal Power Act (relating to the issuance of securities and the assumption of liabilities);

1.7 Implement section 206(b) of the Federal Power Act (relating to the investigation and determination of the cost of production or transmission of electric energy), as the Commission determines appropriate to perform its functions;

1.8 Implement section 207 of the Federal Power Act (relating to adequate and sufficient interstate service);

1.9 Implement section 209 of the Federal Power Act (relating to use of boards composed of State representatives and cooperation with State commissions);

1.10 Implement section 304 of the Federal Power Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.11 Implement section 305 of the Federal Power Act (relating to officers or directors benefitting from the sale of issued securities and to interlocking directorates);

1.12 Implement section 311 of the Federal Power Act (relating to investigations regarding the generation, transmission, distribution, and sale of electric energy), as the Commission determines appropriate to perform its functions;

1.13 Implement sections 1(b) and 1(c) of the Natural Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)) (relating to certain exemptions from the provisions of the Natural Gas Act);

1.14 Implement section 3 of the Natural Gas Act with respect to the decision on cases assigned to the Commission by rule;

1.15 Implement section 5(b) of the Natural Gas Act (relating to the investigation and determination of the cost of production or transportation of natural gas), as the Commission determines appropriate to perform its functions;

1.16 Implement section 10 of the Natural Gas Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.17 Implement section 12 of the Natural Gas Act (relating to officers or directors benefitting from the sale of issued securities);

1.18 Implement section 19 of the Natural Gas Act (relating to rehearings on orders);

1.19 Implement the Interstate Commerce Act (49 U.S.C. 1, *et seq.*) and other statutes which formerly vested authority in the Interstate Commerce Commission or the chairman and members thereof, as such statutes relate to the transportation of oil by pipeline, to the extent that such statutes are not transferred to, and invested in, the Commission by section 402(b) of the DOE Act, *provided*, that this paragraph does not include any of the authority under section 11 of the Clayton Act (15 U.S.C. 21);

1.20 Issue orders, and take such other action as may be necessary and appropriate, to direct the Energy Information Administration to gather energy information pursuant to the Federal Energy Administration Act of 1974 or the Energy Supply and Environmental Coordination Act of 1974 to the extent necessary or appropriate to the exercise of regulatory functions of the Commission;

1.21 In reference to regulating the imports and exports of natural gas under the National Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)), Executive Order No. 10485, as amended by Executive Order No. 12038, and section 301(b), 402(e) and (f) under the Department of Energy Organization Act (Public Law 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*),

A. Approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry of imports or exit for exports, except when the Assistant Secretary for Fossil Energy exercises the disapproval authority pursuant to the Delegation of Authority to the Assistant Secretary for Fossil Energy.

B. Carry out all functions under sections 4, 5, and 7 of the Natural Gas Act.

C. Issue orders, authorizations, and certificates which the Commission determines to be necessary or appropriate to implement the determinations made by the Assistant Secretary for Fossil Energy under the Delegation of Authority to the Assistant Secretary and by the Commission under this subparagraph. The Commission shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Assistant Secretary for Fossil Energy pursuant to the Delegation of Authority to the Assistant Secretary of Fossil Energy.

2. Rescission

Delegation Orders 0204–1, 0204–1 (Amendment 1), 0204–105, 0204–110, 0204–112, 0204–136, 0204–166, 0204–170 are hereby rescinded.

3. Limitations

3.1 In exercising the authority delegated in paragraphs 1.1B through 1.1F in this Order, or redelegated pursuant thereto, the delegate(s) shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).

3.2 Nothing in this Order precludes the Secretary from exercising any of the authority delegated by this Order.

3.3 Except as provided in paragraph 1.14, this Order does not include the authority to carry out the functions delegated herein to the extent such functions are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas or electricity, under section 402(f) of the DOE Act; *provided* that the Secretary may from time to time delegate to the Commission such other authority under section 3 of the Natural Gas Act as may be determined appropriate.

3.4 The Commission shall consult with the Administrator of the Energy Information Administration ("EIA") with respect to the exercise of functions under paragraphs 1.7, 1.10, 1.12, 1.15, 1.16, and 1.20, as EIA considers appropriate.

3.5 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

4. Authority To Redelegate

4.1 Except as expressly prohibited by law, regulation, or this Order, the Commission may delegate, this authority further, in whole or in part.

4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management and Operations Support, which manages the Secretarial Delegations of Authority system.

5. Duration and Effective Date

5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified, and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.

5.2 This Order is effective December 6, 2001.

Spencer Abraham,

Secretary of Energy.

[FR Doc. 02–4564 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mint Farm Generation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from the Mint Farm Generation Project, proposed by Mint Farm Generation LLC (MFG), a wholly owned subsidiary of Mirant Corporation, into the Federal Columbia River Transmission System.

ADDRESSES: Copies of the MFG ROD, Business Plan, and Business Plan EIS and ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Phil Smith, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone number 503–230–3294; fax number 503–230–5699; e-mail *pwsmith@bpa.gov.*

SUPPLEMENTARY INFORMATION: This decision is based on input from public processes and information in the BPA Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 15, 1995). The MFG project is a 319-megawatt gas-fired, combined-cycle, combustion-turbine power generation project, which is located within an industrial park south of the City of Longview, in Cowlitz County, Washington.

Issued in Portland, Oregon, on February 15, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–4616 Filed 2–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142]

FPL Energy Maine Hydro LLC; Notice of Authorization for Continued Project Operation

February 20, 2002.

On December 28, 1999, FPL Energy Maine Hydro LLC, licensee for the Indian Pond Project No. 2142, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2142 is located on the Kennebec River in Somerset and Piscataquis Counties, Maine.

The license for Project No. 2142 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2142 is issued to FPL Energy Maine Hydro LLC for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that FPL Energy Maine Hydro LLC is authorized to continue operation of the Indian Pond Project No. 2142 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4571 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–050]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

February 21, 2002.

Take notice that on February 13, 2002, Gulf South Pipeline Company, LP (Gulf South) filed a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between
Gulf South Pipeline Company, LP and
Okaloosa Gas District

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding 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. 02–4608 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP02–2–000]

Dale P. and/or Avril Jewett; Notice of Petition for Adjustment

February 21, 2002.

Take notice that on January 3, 2002, Dale P. and/or Avril Jewett (the Jewetts) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds to Williams Gas Pipelines Central, Inc. for the period from 1983 to 1988, as required by the Commission's September 10, 1997 order in Docket No. RP97–369–000, et al.[2] The Jewetts's petition is on file with the Commission and open to public inspection.

The Jewetts assert that paying the refund would constitute a burden since they are retired and are living on a fixed income. Dale Jewett was forced to retire in 1992 from Gould Oil Company Inc. and their small working interest ownership in the properties subject to the Commission's order was intended to be "in lieu" of a retirement plan. They state they receive only a very small gross revenue every few months that rarely meets the operating costs assessed by Gould.

Any person desiring to be heard or to protest said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.1105 and 385.1106). 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. 02–4600 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 15 U.S.C. § 3142(c) (1982).

[2] 80 FERC 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–137–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

February 21, 2002.

Take notice that on February 14, 2002, Kern River Gas Transmission Company (Kern River) submitted a response to the Commission's "Order Accepting and Rejecting Certain Tariff Sheets," dated January 31, 2002 in this proceeding.

Kern River states that the purpose of this filing is to demonstrate Kern River's compliance with that portion of the Order pertaining to Kern River's proposed changes to its credit criteria.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

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. 02–4609 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–59–000]

KeySpan-Ravenswood, Inc., Complainant, v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

February 20, 2002.

Take notice that on February 15, 2002, KeySpan-Ravenswood, Inc. (Ravenswood) filed a Complaint Requesting Fast Track Processing against the New York Independent System Operator, Inc. (NYISO) requesting that the Federal Energy Regulatory Commission direct the NYISO to make two limited modifications to the current localized in-City mitigation measures applicable to the installed capacity (ICAP) market. Specifically, Ravenswood requested (1) to convert the current in-City ICAP price cap applicable to owners of divested in-City generation into a bid cap of equal value, and (2) to eliminate the existing ban on bilateral sales of in-City ICAP.

Copies of the complaint were served via facsimile and courier to representatives of the NYISO, Consolidated Edison Company of New York, Inc. and the New York Public Service Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 7, 2002. Copies of this filing are on file

with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4568 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–9–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 21, 2002.

Take notice that on February 11, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report.

GTN states that this filing reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism, in compliance with Section 35 of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected 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 on or before February 28, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 02–4601 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–58–000]

Public Service Company of New Mexico, Complainant, v. Arizona Public Service Company, Respondent; Notice of Complaint

February 20, 2002.

Take notice that on February 15, 2002, Public Service Company of New Mexico, 2401 Aztec Road, NE., Albuquerque, New Mexico, 87107 filed with the Federal Energy Regulatory Commission a complaint against Arizona Public Service Company ("APS") regarding APS' rejection of PNM's attempts to exercise rights of first refusal related to two separate long-term point-to-point transmission service agreements on APS' transmission system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 7, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4567 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042]

Public Utility District No. 1 of Pend Oreille County; Notice of Authorization for Continued Project Operation

February 20, 2002.

On January 21, 2000, Public Utility District No. 1 of Pend Oreille County, licensee for the Box Canyon Project No. 2042, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2042 is located on the Pend Oreille River in Pend Oreille County, Washington and Bonner County, Idaho.

The license for Project No. 2042 was issued for a period ending January 31, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2042 is issued to Public Utility District No. 1 of Pend Oreille County for a period effective February 1, 2002, through January 31, 2003, or until the issuance

of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Public Utility District No. 1 of Pend Oreille County is authorized to continue operation of the Box Canyon Project No. 2042 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4570 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–000]

SCG Pipeline, Inc.; Notice of Route and Site Review

February 20, 2002.

On March 14 and 15, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed SCG Pipeline Project. The SCG Pipeline Project facilities are proposed for construction by SCG Pipeline, Inc (SCG). The proposed pipeline route and route alternatives, crossing portions of Chatham and Effingham Counties, Georgia and Jasper County, South Carolina, will be inspected by automobile.

Anyone interested in attending the route and site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4566 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–10–000]

U–T Offshore System, L.L.C., Enbridge Offshore Pipelines (UTOS) LLC; Notice of Proposed Changes in FERC Gas Tariff

February 21, 2002.

Take notice that on February 12, 2002, U–T Offshore System L.L.C. (U–TOS) and Enbridge Offshore Pipelines (UTOS) LLC (UTOS) filed its FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect a corporate name change to become effective on April 1, 2002. A complete listing of the tariff sheets filed are shown on Appendix A, attached to the filing.

U–TOS and UTOS state that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions. U–TOS and UTOS state that in an attempt to avoid unnecessary postage and duplicating expense, it requested a partial waiver of the requirement in § 154.208 of the Commission's regulations requiring it to serve copies of the listed tariff sheets to all parties. However, U–TOS and UTOS also state that copies of the tariff sheets will be provided, via overnight mail, upon request.

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. 02–4602 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–158–000]

Viking Gas Transmission Company; Notice of Tariff Filing

February 21, 2002.

Take notice that on February 13, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective March 1, 2002:

1st Rev. Twenty-Seventh Revised Sheet No. 6
1st Rev. Twentieth Revised Sheet No. 6A
1st Rev. Eleventh Revised Sheet No. 6B

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Fuel and Loss Retention Percentages (FLRP) in accordance with section 154.403 of the Commission's rules and regulations, 18 CFR 154.403 (2001) and section 26 of the General Terms and Conditions of Viking's FERC Gas Tariff. Application of section 26 of Viking's tariff results in the following new Fuel and Loss Retention Percentages for Rate Schedules FT–A, FT–B, FT–C, FT–D, IT and AOT respectively: 1.18 percent for Zone 1–1, 1.42 percent for Zone 1–2, and .33 percent for Zone 2–2. In addition, Viking is respectfully seeking waiver of section 26 of its FERC Gas Tariff in order to place the new FLRPs into effect on March 1, 2002 rather than on April 1, 2002 so as to provide the benefits of reduced FLRPs to Viking's shippers one month earlier.

If the Commission declines to grant Viking's request, then Viking respectfully submits for filing the tariff sheet listed below to be part of its FERC Gas Tariff, First Revised Volume No. 1 to be effective on April 1, 2002:

Alt. 1st Rev. Twenty-Seventh Revised Sheet No. 6
Alt. 1st Rev. Twentieth Revised Sheet No. 6A
Alt. 1st Rev. Eleventh Revised Sheet No. 6B

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4610 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–51–000, et al.]

Enron Corp., et al.; Electric Rate and Corporate Regulation Filings

February 20, 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. Enron Corp; Enron North America Corp; Enron Power Marketing, Inc.; Enron Net Works L.L.C.; UBS AG

[Docket No. EC02–51–000 and EL02–57–000]

Take notice that on February 13, 2002, Enron Corp. (on behalf of itself and Enron North America Corp., Enron Power Marketing, Inc., and Enron Net Works L.L.C.) (collectively, Enron Applicants) and UBS AG (UBS) filed with the Federal Energy Regulatory Commission (Commission) an application to request that the Commission disclaim jurisdiction over a transaction in which Enron Applicants will lease, license, and transfer certain assets to UBS. In the alternative, Enron and UBS (Applicants) seek authorization pursuant to section 203 of the Federal Power Act for that transaction. Applicants respectfully request that the Commission approve or disclaim jurisdiction over the transaction no later than the date that it acts on the UBS application for market-based rate authority filed on February 6, 2002 in Docket No. ER02–973–000.

Comment Date: March 11, 2002.

2. Kinder Morgan Power Company v. Southern Company Services, Inc.

[Docket No. EL01–115–004]

Take notice that on February 8, 2002, Southern Company Services, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing pursuant to the Commission's order issued on January 30, 2002. The sole purpose of the filing is to correct a typographical error.

Comment Date: March 11, 2002.

3. Point Arguello Pipeline Company

[Docket Nos. EL02–54–000 and QF84–486–001]

Take notice that on February 6, 2002, Point Arquello Pipeline Company (PAPCO) filed with the Federal Energy Regulatory Commission (Commission), a notice of withdrawal of its Petition for Limited Waiver filed with the Commission on March 15, 2001 in the above-captioned proceedings.

Comment Date: March 8, 2002.

4. Wheelabrator Westchester, L.P.

[Docket No. ER98–3030–001]

Take notice that on June 18, 2001, Wheelabrator Westchester, L.P., formerly known as Westchester RESCO Company, L.P., (Westchester) a Qualifying Facility selling power at wholesale pursuant to market-based rate authority granted to it by the Federal Energy Regulatory Commission (Commission), tendered for filing with the Commission an updated market power analysis in compliance with the Commission's June 18, 1998 letter order in the above-referenced proceeding.

Comment Date: March 13, 2002.

5. Great Northern Paper, Inc.

[Docket No. ER02–501–001]

Take notice that on February 14, 2002, Great Northern Paper, Inc. (GNP) tendered its compliance filing with the Federal Energy Regulatory Commission (Commission) with respect to the Commission's Order issued January 22, 2002 herein granting its application for authorization to sell electric power and ancillary services at market based rates.

Comment Date: March 7, 2002.

6. Armstrong Energy Limited Partnership, LLLP; Pleasants Energy, LLC ; Troy Energy, LLC

[Docket No. ER02–835–001, ER02–836–001, and ER02–837–001]

Take notice that on February 14, 2002, Armstrong Energy Limited Partnership, LLP, Pleasants Energy, LLC and Troy Energy, LLC filed to modify their January 23, 2002 filing in the above-captioned proceeding.

Copies of the filing were served upon Ohio Public Utilities Commission, the Pennsylvania Public Service commission, the North Carolina Utilities Commission, Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment Date: March 7, 2002.

7. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–858–000]

Take notice that on February 14, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing in this Docket a transmittal letter dated January 28, 2002 to supercede the transmittal letter originally filed on January 28, 2002. This filing was amended in order to correct an administrative error that resulted in the transposition of cover letters among two filings concurrently made on January 28, 2002. This Docket concerns the Market-Based Power Sales Agreement between Wolverine Power Supply Cooperative, Inc. (Wolverine) and Great Lakes Energy Cooperative (AGreat Lakes). Wolverine requested an effective date of January 2, 2002 for this Agreement.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: March 7, 2002.

8. Wolverine Power Supply Cooperative Inc.

[Docket No. ER02–859–000]

Take notice that on February 14, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing in this Docket a transmittal letter dated January 28, 2002 to supercede the transmittal letter originally filed on January 28, 2002. This filing was amended in order to correct an administrative error that resulted in the transposition of cover letters among two filings concurrently made on January 28, 2002. In addition, the Transmission Agreements will be designated as Service Agreement No. 2 under Wolverine Power Supply Cooperative, Inc's FERC Electric Tariff, First Revised Vol. No. 1. This Docket concerns the Service Agreement for Network Integration Transmission

Service and the Network Operating Agreement (collectively, Transmission Agreements) between Great Lakes Energy Cooperative and Wolverine Power Supply Cooperative, Inc (Wolverine). Wolverine requested an effective date of January 2, 2002 for this Service Agreement.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: March 7, 2002.

9. Progress Energy Inc. on behalf of Carolina Power & Light Company

[Docket No. ER02–1002–000]

Take notice that on February 12, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Calpine Energy Services, L.P. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of January 18, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: March 5, 2002.

10. Entergy Services, Inc.

[Docket No. ER02–1017–000]

Take notice that on February 14, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Union Power Partners, L.P.

Comment Date: March 7, 2002.

11. Entergy Services, Inc.

[Docket No. ER02–1023–000]

Take notice that on February 14, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing a unilaterally executed Interconnection and Operating Agreement with Hot Spring Power Company, LLC. (Tractabel), and a Generator Imbalance Agreement with Tractabel.

Comment Date: March 7, 2002.

12. Duke Energy Sandersville, LLC

[Docket No. ER02–1024–000]

Take notice that on February 14, 2002, Duke Energy Sandersville, LLC (Duke Sandersville) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Sandersville seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Sandersville also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Sandersville seeks an effective date 60 days from the date of filing for its proposed rate schedules.

Comment Date: March 7, 2002.

13. Liberty Electric Power, LLC

[Docket No. ER02–1025–000]

Take notice that on February 14, 2002, Liberty Electric Power, LLC (Liberty Electric) filed with the Federal Regulatory Commission (Commission) the Tolling Agreement between Liberty Electric and PG&E Energy Trading—Power, L.P. (PGET) with a requested effective date of April 1, 2002. The filing is made pursuant to Liberty Electric's authority to sell power at market-based rates under its Market-Based Rate Tariff, Rate Schedule FERC No. 1, approved by the Commission on November 20, 2001, in Docket No. ER01–2398–000.

Comment Date: March 7, 2002.

14. Phelps Dodge Energy Services, L.L.C.

[Docket No. ER02–1026–000]

Take notice that on February 14, 2002, Phelps Dodge Energy Services, L.L.C. filed a request amending its market-based rate tariff, FERC Electric Rate Schedule No. 1, and its Code of Conduct to permit sales to its affiliates without making a separate filing under Section 205 under the Federal Power Act.

Comment Date: March 7, 2002.

15. Electric Energy, Inc.

[Docket No. ER02–1027–000]

Take notice that on February 14, 2002, Electric Energy, Inc. (EEInc.) tendered for filing a Letter Supplement dated October 5, 2001 to a power sale agreement between EEInc. and the United States Department of Energy (DOE) designated as Contract No. DE-AC05–760R01312 (EEInc. Rate Schedule FERC No. 10). EEInc. states that the Letter Supplement cancels the obligation of DOE to purchase Firm Additional Power from EEInc.

EEInc. has asked for waiver of any applicable requirements in order to make the Letter Supplement effective as of January 1, 2002, in accordance with its terms.

Comment Date: March 7, 2002.

16. Wrightsville Power Facility, L.L.C.

[Docket No. ER02–1028–000]

Take notice that on February 15, 2002, Wrightsville Power Facility, L.L.C. (Wrightsville) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Wrightsville requested expedited Commission consideration. Wrightsville requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or March 21, 2002. Wrightsville also filed its FERC Electric Tariff No. 1.

Comment Date: March 8, 2002.

17. Oncor Electric Delivery Company

[Docket No. ER02–1029–000]

Take notice that on February 15, 2002, Oncor Electric Delivery Company (Oncor), tendered for filing a Notice of Succession pursuant to section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, Oncor is succeeding to the tariffs and related service agreements of TXU Electric Delivery Company, effective January 17, 2002.

Comment Date: March 8, 2002.

18. UtiliCorp United Inc.

[Docket No. ES02–25–000]

Take notice that on February 15, 2002, UtiliCorp United Inc. submitted an application pursuant to section 204(a) of the Federal Power Act seeking authorization to issue, from time to time during a two-year period, unsecured notes and other obligations, including financial guarantees of securities issued by subsidiaries and affiliates up to and including $1,500,000,000, in the aggregate at any one time outstanding, for periods of time not exceeding twelve months after issuance.

Comment Date: March 8, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. OA02–4–000]

Take notice that on February 5, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing PJM's amended FERC Order 889 Standards of Conduct (Code of Conduct). PJM proposes to amend its Code of Conduct to clarify that the code prohibits spouses or minor

children of PJM employees, officers, or Board members from owning securities in market participants, but that, in limited circumstances, spouses or dependent children of PJM employees, officers, or Board members may own securities of market participants where the spouse's or dependent child's employee retirement or compensation plan prevents divesting the securities.

PJM proposes to make its amended Code of Conduct effective immediately, on February 6, 2002, the day after the date of this filing. Copies of this filing have been served on all PJM members and each state utility regulatory commission in the PJM control area.

Comment Date: March 7, 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. 02–4563 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission and the California State Lands Commission

[FERC Docket No. CP01–422–000, CA State Clearinghouse No. 2001071035, and BLM Reference No. CACA–43346]

Kern River Gas Transmission Company; Notice of Availability/ Completion of the Draft Environmental Impact Statement/Report for the Proposed Kern River 2003 Expansion Project

February 21, 2002.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission) and the California State Lands Commission (CSLC) have prepared a draft environmental impact statement/report (EIS/EIR) to address natural gas pipeline facilities proposed by Kern River Gas Transmission Company (KRGT).

The draft EIS/EIR was prepared as required by the National Environmental Policy Act and the California Environmental Quality Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. The FERC and the CSLC staffs conclude that approval of the proposed project, with appropriate mitigation measures as recommended, would have limited adverse environmental impact.

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS/EIR because the project would cross Federal land under the jurisdiction of seven field offices in Wyoming, Utah, and Nevada, and one district office and three field offices in California. The U.S. Department of Agriculture, Forest Service (FS) is also a cooperating agency in the preparation of the document because the Dixie National Forest and the Humboldt-Toiyabe National Forest/ Spring Mountains National Recreation Area would be crossed by the project. The EIS/EIR will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on Federal lands.

The draft EIS/EIR addresses the potential environmental effects of the construction and operation of the following facilities in Wyoming, Utah, Nevada, and California:

- 634.5 miles of 36-inch-diameter pipeline adjacent to KRGT's existing pipeline in Wyoming (Lincoln and Uinta Counties), Utah (Summit, Morgan, Salt Lake, Utah, Juab, Millard, Beaver, Iron, and Washington Counties), Nevada (Lincoln and Clark Counties), and California (San Bernardino County);
- 82.2 miles of 42-inch-diameter pipeline adjacent to the portion of KRGT's existing pipeline that it jointly owns with Mojave Pipeline Company in California (San Bernardino and Kern Counties);
- 0.8 mile of 12-inch-diameter pipeline in Uinta County, Wyoming;
- three new compressor stations, one each in Wyoming (Uinta County), Utah (Salt Lake County), and Nevada (Clark County) for a total of 60,000 horsepower (hp) of compression;
- modifications to six existing compressor stations, one in Wyoming (Lincoln County), three in Utah (Utah, Millard, and Washington Counties), one in Nevada (Clark County), and one in California (San Bernardino County) for a total of 103,700 hp of compression;
- modifications to one existing meter station in Wyoming (Lincoln County) and four existing meter stations in California (two each in San Bernardino and Kern Counties); and
- various mainline block valves, internal inspection tool launcher/ receiver facilities, and other appurtenances.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS/EIR may do so. However, to ensure inclusion in the environmental analysis it is imperative that your comments are received by the date specified below. Please carefully follow these instructions so that your comments are properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission 888 First Street, N.E., Room 1A, Washington, DC 20426;
- Reference Docket No. CP01–422–000;
- Label one copy of your comments for the attention of the Gas Branch 1;
- Send an additional copy of your letter to the following individual: Cy Oggins, California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825; and
- Mail your comments so that they will be received in Washington, DC and Sacramento, CA on or before April 15, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Because

only those comments received on or before April 15, 2002 will be considered in the final EIS/EIR, the Commission encourages electronic filing or use of private mail delivery services to submit comments on the draft EIS/EIR. See Title 18 Code of Federal Regulations (CFR) Part 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account."

In addition to or in lieu of sending written comments, the FERC and the CSLC invite you to attend the public meetings the staffs will conduct in the project area to receive comments on the draft EIS/EIR. All meetings will begin at 7:00 p.m., and are scheduled as follows:

Date	Location
Monday, April 1, 2002	Ramada Inn, 1511 E. Main Street, Barstow, California 92311, (760) 256–5673.
Tuesday, April 2, 2002.	Clark County Government Center, ETD Room 3, 500 South Grand Central Parkway, Las Vegas, Nevada 89106, (702) 455–3121.
Wednesday, April 3, 2002.	Holiday Inn, 1575 West 200 North, Cedar City, Utah 84720, (435) 586–8888.
Thursday, April 4, 2002.	Fairfield Inn, 230 North Admiral Byrd Drive, Salt Lake City, Utah 84116, (801) 355–3331.
Friday, April 5, 2002	Days Inn, 339 Wasatch Road, Evanston, Wyoming 82930, (307) 789–2220.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS/EIR. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS/EIR, a final EIS/EIR will be published and distributed. The final EIS/EIR will contain the FERC and the CSLC staffs' responses to timely comments received on the draft EIS/EIR.

Comments will be considered by the FERC and the CSLC but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 CFR part 385.214). Anyone may intervene in this proceeding based on the draft EIS/EIR. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Federal, state, and local agencies; elected officials; Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments or written or oral comments on the draft EIS/EIR, as well as those who previously asked to remain on the mailing list will receive a copy of the final EIS/EIR. If you are not described by one of these categories but wish to receive a copy of the final EIS/EIR, you must write to the Secretary of the FERC indicating this request.

The draft EIS/EIR has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371

and

California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825, (916) 574–1889

A limited number of copies of the draft EIS/EIR are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Cy Oggins, CSLC, at the address above. The draft EIS/EIR is available for viewing at *http://www.kernriver2003.com* and at the public libraries listed in appendix 1 of this notice.[2]

Additional information about the proposed project is available from Cy Oggins at the CSLC at (916) 574–1884, or on the CSLC website at *http://www.slc.ca.gov,* and from the FERC's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website at *http://www.ferc.gov* using the "RIMS" link. Click on the "RIMS" link, select "Docket#," and follow the instructions (call (202) 208–2222 for assistance). Access to the texts of formal documents issued by the FERC, such as orders and notices, is also available on the FERC website by using the "CIPS" link, selecting "Docket#," and following the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the involvement of the BLM is available from Jerry Crockford, BLM Project Manager, at (505) 599–6333. Information concerning the involvement of the FS is available from Kathy Slack, Supervisor's Office, at (435) 865–3742.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4599 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[2] The appendix referenced in this notice is not being printed in the **Federal Register**. A copy is available on the FERC's website (*http://www.ferc.gov*) at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202)208–1371. For instructions on connecting to RIMS, refer to page 6 of this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 696–010.

c. *Date filed:* October 27, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest. Also, approximately 2,000 feet of flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 USC § 791(a)–825(r).

h. *Applicant Contact:* Mark A. Sturtevant, Project Manager, PacifiCorp 825 NE Multnomah, suite 1500, Portland, Oregon, 97232 (503) 813–6680.

i. *FERC Contact:* Any questions on this notice can be addressed to Gaylord W. Hoisington, E-mail address

gaylord.hoisington@ferc.gov, or telephone (202) 219–2831.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the date of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protest, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The American Fork Project consists of: (1) a 29-foot, 9-inch-wide and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide, 6-foot-long intake; (3) a 6-foot-long, 6-foot-wide manually operated sluice gate; (4) a 2-foot-long, 2-foot-wide manually operated upstream sluice gate; (5) a 28-inch-diameter, welded steel pipe flowline approximately 11,666 feet long which transitions into a 33-inch-diameter riveted steel penstock 253 feet long that transitions into a 20-inch-diameter riveted steel penstock 61 feet long; (6) an approximately 2,700-square-foot brick powerhouse; (7) one turbine generator unit with a rated capacity of 1,050 kilowatts; and (8) other appurtenances.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4569 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–074]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 20, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2210–074.

c. *Date Filed:* February 6, 2002.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 21, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–074) on any comments or motions filed.

k. *Description of Request:* APC is requesting Commission approval to permit M&J Developers, L.L.C. (permittee) to install and operate within the project boundaries: (a) Three stationary docks with a total of 108 covered boat slips; (b) twenty-six floating boat slips; (c) a beach with a jetty; and (d) associated shoreline protection facilities. The facilities would be located at the upper end of the main channel of the Roanoke River at an area known as "Camilles."

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4572 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Minor License.

b. *Project No.*: 6418–007.

c. *Date Filed*: February 12, 2002.

d. *Applicant*: Judith A. Burford.

e. *Name of Project*: A J Allen Power Plant.

f. *Location*: On East Brush Creek, a tributary of the Eagle River, in Eagle County, Colorado. The project occupies 1.008 acres of land within the White River National Forest.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact*: J Richard Allen, 5401 East Dakota Avenue # 21, Denver, Colorado 80426, Tel. # (303) 333–1339.

i. *FERC Contact*: Gaylord W. Hoisington, (202) 219–2756 or *gaylord.hoisington@FERC.gov*.

j. *Deadline for filing additional study request*: April 15, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing A j Allen Project consists of: (1) An 8-inch-diameter 970-foot-long steel pipeline; (2) a rock pile diversion structure; (3) a gate valve just upstream of the turbine; (4) a 9-foot by 11-foot concrete and wood powerhouse containing a Pelton impulse turbine having a rated capacity of 8-kilowatts; (5) a 5-volt 112-foot-long transmission line; and (6) other appurtenances.

m. A copy of the application is available for inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *COLORADO STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of application is ready for environmental analysis

Notice of the availability of the NEPA document

Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4574 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 21, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2114–105.

c. *Date Filed:* February 11, 2002.

d. *Applicant:* Public Utility District No. 2 of Grant County (Grant), WA.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River, in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Department of Energy, U.S. Department of the Army, and U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Don Godard, Public Utility District No. 2 of Grant County, WA, P.O. Box 878, Ephrata, WA, 98823; (509) 754–3541.

i. *FERC Contact:* Bob Easton (202) 219–2782, e-mail: *robert.easton@ferc.fed.us*. The Commission cannot accept comments,

motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, motions to intervene, and protests:* 14 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 at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* Grant proposes to continue testing the use of a temporary overflow spill gate for passing juvenile salmon and steelhead downstream of Wanapum dam. The overflow spill gate is a bulkhead-type steel structure measuring 57 feet wide and 79 feet high. Flow through the overflow spill gate would be controlled by the forebay elevation and a weir structure and test flows would range up to 11,000 cubic feet per second (cfs). In an environmental assessment issued in March 1996, the Commission evaluated the environmental effects of the temporary overflow spill gate for providing fish passage at Wanapum dam. In orders dated March 29, 1996, and June 20, 1997, the Commission approved the testing of this device. Both orders required Grant to file any plans for additional testing with the Commission for approval. The immediate amendment application requests approval for continued testing of the temporary overflow spill gate with minor modifications, including removal of three vertical partitions, increasing the test flows from approximately 5,000 cubic feet per second (cfs) to 11,000 cfs, and controlling flow with a weir rather than the tainter gate. Comments on the Amendment of License are due on the date listed in item j above.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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).

m. Individuals desiring to be included on the Commission's mailing list should indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4603 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

February 21, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Continued Temporary Variance.

b. *Project No:* 2727–070.

c. *Date Filed:* January 30, 2002.

d. *Applicant:* PPL Maine, LLC.

e. *Name of Project:* Ellsworth Hydroelectric Project.

f. *Location:* The project is located on the Union River in Hancock County, Maine.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Scott D. Hall, PPL Maine, LLC, Davenport Street, Milford, ME 04461–0276, (207) 827–2247.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Erich Gaedeke at (202) 208–0777, or e-mail address: *erich.gaedeke@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* March 9, 2002.

All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (P–2727–070) on any comments or motions filed.

k. *Description of Request:* The licensee is requesting to extend the temporary variance to the minimum flow requirements of article 401 of its license for the Ellsworth Hydroelectric Project until May 1, 2002. The licensee is concerned that as a result of the continuation of extraordinary low inflows to Graham Lake storage reservoir, releasing the current required minimum flows will jeopardize maintenance of the lake level above the lowest elevation of the Project's operating rule curve, as well as having enough water to satisfy additional flows in May and June. As a result, the licensee plans to continue minimum flow releases of 50 cubic feet per second (cfs) instead of the required minimum flow release of 105 cfs under article 401. The licensee has consulted with the various resource agencies regarding the temporary minimum flow modification.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4604 Filed 2–26–02; 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 21, 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.:* 12141–000.

c. *Date filed:* January 2, 2002.

d. *Applicant:* Energy Recycling Company.

e. *Name of Project:* Klamath County Water Power Project.

f. *Location:* In Klamath County, Oregon, partially in Bureau of Land Management lands. T39S, R11E (sections 35 and 36), T39S, R12E (sections 19, 20, 30, and 31), T40S, R12E (sections 1, 2, 11, 12, 13, 14, 24, 25, and 26), T40S, R13E (section 6).

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Mr. Douglas Spaulding, Energy Recycling Company, 1433 Utica Ave. South, Suite 162, Minneapolis, MN 55416, phone (952) 544–8133.

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–12141–000) 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. *Description of Project:* The proposed pumped storage project would consist of the following new facilities: (1) An upper reservoir with a maximum storage capacity of 14,300 acre-feet and an area of 199 acres at maximum normal water surface elevation of 5,523 feet above mean sea level (msl), impounded by two earth and rock fill embankments, 178 and 50-foot-high, respectively, with a crest elevation of 5,533 feet msl; (2) a 24-foot-diameter, 1,326-foot-long vertical shaft; (3) a 24-foot-diameter, 3,200-foot-long concrete-lined tunnel; (4) four 12-foot-diameter, 355-foot-long, steel-lined penstocks; (5) a powerhouse with four 250-megawatt pump/turbines; (6) a 1,500-foot-long by 38-foot-wide D-shaped tailrace tunnel; (7) a lower reservoir with a maximum storage capacity of 16,900 acre-feet and an area of 405 acres at maximum water surface elevation of 4,191 feet msl, impounded by a 49-foot-high earth and rockfill embankment, with a crest elevation of 4,200 feet msl; (8) a 4-mile-long, 500-kilovolt transmission line connecting the project to Captain Jack substation; and (9) other appurtenances. The project would operate as a closed system using water obtained from groundwater sources.

The project would have an annual generation of 1,576.8 GWh that would be sold to a local utility.

l. 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4605 Filed 2–26–02; 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 21, 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.:* 12142–000.

c. *Date filed:* January 8, 2002.

d. *Applicant:* CRD Hydroelectric LLC.

e. *Name of Project:* Coon Rapids Dam 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 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas Spaulding, Spaulding Consultants, 1433 Utica Ave. South, Suite 162, Minneapolis, MN 55416, phone (952) 544–8133

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, D.C. 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–12142–000) 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. *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 8 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 45 GWh that would be sold to a local utility.

l. 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4606 Filed 2–26–02; 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 21, 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.:* 12143–000.

c. *Date filed:* July 19, 2001.

d. *Applicant:* Savannah River Resource Enhancement, LLC.

e. *Name of Project:* W. Kerr Scott Project.

f. *Location:* On the Yadkin River, in Wilkes County, North Carolina. The project would use the existing U.S. Army Corps of Engineer's W. Kerr Scott Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles B. Mierek, The Clifton Corporation, 5250 Clifton-Glendale Road, Spartanburg, SC 29307–4618, Phone (864) 579–4405.

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, D.C. 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–12143–000) 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. *Description of Project:* The proposed project using the U.S. Army Corps of Engineer's W. Kerr Scott Dam and Reservoir would consist of: (1) A proposed 440-foot-long, 11.5-foot-diameter steel penstock, (2) a proposed powerhouse containing two generating units having a total installed capacity of 4.85 MW, (3) a proposed 1-mile-long, 12.47 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 19.5 GWh that would be sold to a local utility.

l. 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit--Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4607 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4204–024, 4660–028 and 4659–026-Arkansas White River Lock and Dam Nos. 1, 2, and 3]

City of Batesville, Arkansas and , Independence County, Arkansas; Notice of Proposed Restricted Service List for a Memorandum of Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

February 20, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. [1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Arkansas State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a memorandum of agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 4204, 4660, and 4659.

The memorandum of agreement, when executed by the Commission, the SHPO, and possibly the Council (36 CFR 800.6), would satisfy the Commission's Section 106 responsibilities for the proposed amendments filed by the City of Batesville, Arkansas and Independence County, Arkansas to change the route of the unconstructed transmission line and to construct a new substation. The Commission's responsibilities pursuant to Section 106 for the above projects would be fulfilled through the memorandum of agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed memorandum of agreement would be incorporated into any orders amending the licenses.

City of Batesville, Arkansas, and Independence County, Arkansas, as licensees for Project Nos. 4204, 4660, and 4659, are invited to participate in consultations to develop and sign the memorandum of agreement as concurring parties. The Osage and Quapaw Tribes are also invited to participate in consultations to develop and sign the memorandum of agreement as concurring parties.

For purposes of commenting on the memorandum of agreement, we propose to restrict the service list for the aforementioned projects as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20004

Dr. Cathie Matthews, State Historic Preservation Officer,1500 Tower Building 323 Center Street, Little Rock, AR 72201

Chairperson Tamara Summerfield, Quapaw Tribal Business Committee, P.O. Box 765, Quapaw, OK 74363

Principal Chief Charles O. Tillman, Jr., Osage Tribal Council, P.O. Box 779, Pawhuska, OK 74056

Donald H. Clarke, Law Offices of GKRSE, 1500 K Street N.W., Suite 330, Washington DC 20005

Scott T. Fletcher, Duke Engineering & Services, Inc., 400 S. Tryon St., WC22K, P.O. Box 1004, Charlotte, N.C. 28201–1004

Darlene Low, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, OK 74103

Robert Orr, Southwestern Power Administration, P.O. Box 3337, Springfield, MO 65808

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each

[1] 18 CFR 385.2010.

person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4573 Filed 2–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Floodplain/Wetland Involvement at the Supply Creek Crossing for the Granby Pumping Plant-Marys Lake 69-kilovolt Transmission Line, Grand County, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of statement of findings.

SUMMARY: This Floodplain/Wetland Statement of Findings for the Supply Creek Crossing, Granby Pumping Plant-Marys Lake 69-kilovolt (kV) Transmission Line was prepared in accordance with the U.S. Department of Energy's (DOE) Floodplain/Wetland Review Requirements. Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a proposal to reroute a 0.8 mile section of the Granby Pumping Plant-Marys Lake 69-kV transmission line. The project is located in Grand County, Colorado, approximately 10 miles north of Granby. Western plans to remove eight wood-pole H-frame structures from the existing right-of-way and relocate them farther to the west, a distance ranging from a few hundred feet to approximately 1,000 feet. All the proposed work will likely occur within a 100-year floodplain of Supply Creek. The existing transmission line and the proposed reroute cross a wetland associated with Supply Creek, and an irrigated meadow. Western has prepared a floodplain/wetland assessment and based on its findings, found no practicable alternative to avoiding the floodplain/wetlands of Supply Creek.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 461–7371, e-mail *rjones@wapa.gov*. For further information on DOE Floodplain/Wetlands Environmental Review Requirements, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This Statement of Findings for the proposal to relocate a 0.8 mile section of the Granby Pumping Plant-Marys Lake 69-kV transmission line was prepared in accordance with DOE's Floodplain/Wetland Review Requirements 10 CFR part 1022. A notice of floodplain/wetland involvement was published in the **Federal Register** on November 23, 2001 (66 FR 226). A 15-day public review period following the publication of this statement of findings has been waived per 10 CFR part 1022.18(c). No comments were received on the notice. There was one request for a copy of the floodplain/wetlands assessment.

The Supply Creek Crossing is located approximately 2 miles to the south-southwest of the town of Grand Lake and 1 mile west of Shadow Mountain Lake in Grand County, Colorado. The project area encompasses portions of the south ½ of section 11 and the northwest ¼ of section 14, T. 3 N., R.76 W. The property is privately owned. Current land use is ranching, grazing, and hay production. The Granby Pumping Plant to West Portal portion of the Granby Pumping Plant-Marys Lake 69-kV transmission line was constructed in 1939. Due to the age of this transmission line, Western has routinely tested and replaced deteriorated wood-pole structures on the transmission line as needed. A landowner approached Western and requested that a section of the transmission line on his property be relocated to facilitate ongoing ranching operations. The relocation of the line will also benefit Western's operation and maintenance activities in a number of ways. The relocated line will be in an area that is less wet and more accessible for routine inspections and maintenance. Access to the existing section of transmission line for maintenance is difficult due to hay meadow irrigation and naturally wet conditions. Western plans to remove eight wood-pole H-frame structures from the existing right-of-way and relocate them farther to the west, a distance ranging from a few hundred feet to approximately 1,000 feet. Western is the lead Federal agency for a proposal to reroute a 0.8 mile section of the Granby Pumping Plant-Marys Lake 69-kV transmission line. This action is categorically excluded under DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

The reroute for the proposed project was selected because it avoids interfering with the landowner's ranching operations; and it moves the right-of-way into an area with relatively drier conditions than the existing right-of-way. Western could leave the line where it is and continue to replace deteriorating structures as needed. However, this would not solve the conflict with the landowner's planned ranch operations.

The project will require construction activities within a floodplain and a wetland. This includes removing eight existing wood-pole H-frame transmission line structures and installing eight similar structures within a new relocated right-of-way. The structures located at either end of the relocation may be modified, or reconstructed, at their existing location. Most construction activities would take place during the early months of 2002 when the ground is frozen to facilitate access in the extremely wet areas. This action would conform to applicable State or local floodplain protection standards.

Western prepared a floodplain/wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. There is no practicable alternative to locating structures within the floodplain and wetlands of Supply Creek. Environmental impacts associated with the proposed project are expected to be minimal. Habitat within the southern two-thirds of the project area is native and tame pasture grasses with wet meadows. Supply Creek crosses under the line in the northern third of the property. The habitat in this area is an open-canopy, willow/shrub. The open meadow and creek areas are either grazed or mowed at least annually. There are several ranch buildings east of the existing line, as well as a large developed residential area. Relocation of the line within the same meadow and wetland area will have minimal impact. Since construction activities are scheduled to commence during the winter, minimal impact to Supply Creek and its aquatic habitat, vegetation, and soils would result.

The project would not affect existing flood characteristics. No watercourses or drainage patterns will be affected by the project. No construction will occur within Supply Creek. Flood storage volume will not be affected. No change in flood stage characteristics would occur.

A small increased risk of pollution would result from having construction equipment working in the floodplain. This includes the risk of accidental oil or fuel spills from malfunctioning equipment. Given the size of equipment involved and the amount of potential spill material, this risk is considered very low. If a spill were to occur it would be minor and could be readily contained and cleaned up.

Steps will be taken to minimize harm to the 100-year floodplain of Supply Creek, and include restricting vehicular traffic to necessary construction equipment, refueling equipment, if necessary, outside the floodplain or the surrounding wet meadow, and preventing vehicles with leaks and seeps from entering the floodplain. Due to the need to complete the work before the ground thaws and maintain project effectiveness, the 15-day public review period following the publication of this statement of findings has been waived per 10 CFR part 1022.18(c).

Dated: February 20, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–4618 Filed 2–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) firm power base charge and rates. The current base charge and rates expire September 30, 2002. The current base charge is not sufficient to pay all annual costs including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to pay all annual costs, including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2002. The proposed base charge and rates are scheduled to become effective on October 1, 2002, the beginning of Federal fiscal year (FY) 2003, and will remain in effect through September 30, 2003. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 28, 2002. Western representatives will explain the proposed base charge and rates at a public information forum on April 4, 2002, beginning at 10 a.m. MST, Phoenix, AZ. Interested parties can provide oral and written comments at a public comment forum on April 25, 2002, beginning at 10 a.m. MST, at the same location.

ADDRESSES: The meetings will be held at the Desert Southwest Customer Service Regional Office 615 South 43rd Avenue, Phoenix, Arizona. If you are interested in sending comments, address them to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail: *carlson@wapa.gov*. Comments must be received by Western by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768, e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION:

Proposed Base Charge and Rates for BCP Firm Power

The proposed base charge and rates for BCP firm power service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. These annual costs are reduced by the projected revenue from water sales, visitor services, water pump energy sales, facility use charges, regulation services, miscellaneous leases, late fees, and the prior year carryover to determine the annual revenue requirement. The projected annual revenue requirement is the base charge for firm power service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of the Department of Energy (DOE) approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F6 for BCP firm power service on August 29, 2001, (Rate Order No. WAPA–94, October 13, 2000). The Federal Energy Regulatory Commission (FERC) confirmed and approved the rate formula on a final basis in Docket No. EF00–5092–000 issued July 31, 2001. Rate Schedule BCP–F6 became effective on October 1, 2000, for the period ending September 30, 2005. Under Rate Schedule BCP–F6, for FY 2002, the base charge is $48,039,988, the forecasted energy rate is 5.33 mills per kilowatthour (mills/kWh) and the forecasted capacity rate is $0.99 per kilowattmonth (kWmonth). The composite rate is 10.32 mills/kWh.

The FY 2003 proposed base charge is $58,993,730, the forecasted energy rate is 6.22 mills/kWh, and the forecasted capacity rate is $1.26/kWmonth. The proposed composite rate is 12.44 mills/kWh. This is approximately a 21 percent increase from the current composite rate. The proposed base charge and rates are based on the FY 2003 operating plan for Western and the Bureau of Reclamation (Reclamation), and also account for the restrictions in operations at the Hoover Dam following the September 11, 2001 terrorist attack in the United States. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

Current Oct. 1, 2001 through Sept. 30, 2002	Proposed Oct. 1, 2002 through Sept. 30, 2003	Percent change increase	
Total Composite (mills/kWh)	10.32	12.44	21
Base Charge ($)	48,039,988	58,993,730	23
Energy Rate (mills/kWh)	5.33	6.22	17
Capacity Rate ($/kWmonth)	0.99	1.26	27

The increase in the base charge and rates results from higher annual costs and lower non-power revenues. The significant increase in annual costs is due to increased security staff at Hoover Dam, and limitations on public tours at the Hoover visitor center. Another contributing factor is an increase in the replacement costs.

Procedural Requirements

Although the proposed base charge and rates do not constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, Western will hold both a public information forum and a public comment forum. After considering comments, Western will recommend the proposed base charge and rates for final approval by the DOE Deputy Secretary.

The proposed firm power service base charge and rates for BCP are being established pursuant to the DOE 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 project involved.

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed base charge and rates. These documents are at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedural 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 that applies to rates or services for 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 8, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–4617 Filed 2–26–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7150–5]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations to fill several potential vacancies on the Good Neighbor Environmental Board (GNEB), a federal advisory committee that reports to the President and Congress on environmental infrastructure issues along the U.S. border with Mexico. Under Executive Order, responsibility for committee management was delegated to the Administrator of EPA. The Agency seeks qualified senior-level decision makers from diverse sectors living in one of the four U.S. border states to be considered for appointments. EPA expects to make new appointments or reappointments by the end of May, 2002 and encourages nomination submissions by March 31, 2002.

CONTACT: Submit nominations to Elaine M. Koerner, Designated Federal Officer, Good Neighbor Environmental Board (see below for contact details).

SUPPLEMENTARY INFORMATION: GNEB is a federal advisory committee authorized under section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. Section 5404. Board members include representatives from eight federal government agencies and from each of the four U.S. border states—Arizona, California, New Mexico, and Texas. The combined expertise at the table reflects perspectives from many U.S. sectors including federal, tribal, state, and local government; non-governmental; academic institutions; and businesses. It meets three times a year at various border locations.

Good Neighbor submits its advice to the President and Congress in the form of reports containing recommendations for action. It also issues occasional comment letters on timely topics. The Board is managed by the U.S. Environmental Protection Agency under the provisions of the Federal Advisory Committee Act (FACA). Its meetings are open to the public.

Recruitment of new members is based on a goal of maintaining a balance and diversity of experience, knowledge, and judgement. Continued representation from many sectors to achieve broad-based, nonpartisan consensus remains a key consideration in member selection. New member appointments and reappointments are made by EPA Administrator Christine Todd Whitman.

Representatives from state, local and tribal agencies, industry, academia, environmental justice organizations, grassroots organizations, NGOs, and other groups are encouraged to submit applications. Potential candidates should possess the following qualifications:

Senior responsibilities within their organization
Broad experience outside of their current position
Experience dealing with public policy issues
Membership in broad-based networks
Extensive experience in environmental issues along the U.S.-Mexico border
Recognized expertise in one or more major border-region issues

Nominations for membership must include a resume and a short biography describing the educational and professional qualifications of the nominee, as well as the nominee's current contact information. This information should include business address, phone, fax, and e-mail. For those who self-nominate, a letter of support from a reference is encouraged.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for GNEB, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460; telephone (202) 564–1484, e-mail: *koerner.elaine@epa.gov*

Dated: February 15, 2002.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 02–4646 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7146–8]

The Commonwealth of the Northern Mariana Islands; Full Program Adequacy Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination of full program adequacy of the Commonwealth of the Northern Mariana Islands (CNMI) Municipal Solid Waste Landfill Permitting Program, public hearing, and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or conditionally exempt small quantity generator waste, comply with the revised Federal MSWLF Criteria. Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. Approval of State permit programs allows the State to tailor permits to include site-specific conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that, regardless of the approval status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The CNMI is defined as a "State" in 40 CFR 258.2. The CNMI has applied for a determination of adequacy under Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region IX has reviewed the CNMI's MSWLF permit program application and has made a tentative determination that all portions of the CNMI's permit program application are adequate to ensure compliance with the revised MSWLF criteria. The CNMI's application for program adequacy is available for public review and comment during regular business hours at the place(s) listed in the **ADDRESSES** section below.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express an interest in participating in a hearing by writing to the Region IX Office of Pollution Prevention and Solid Waste at the address listed in the **ADDRESSES** section below or by calling the contact given in the **FOR FURTHER INFORMATION CONTACT** section below within 30 days of the date of publication of this notice, the Region will hold a hearing in Susupe, Saipan, CNMI. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

DATES: All comments on the CNMI's application for a determination of adequacy must be received by the close of business on April 29, 2002.

If, and only if, sufficient public interest in having a public hearing is requested on or before March 29, 2002, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on April 29, 2002, from 6:00 p.m. to 8:00 p.m. If EPA determines that more time for receiving testimony is needed, EPA may extend the closing time up to 8:30 p.m. on this date. The hearing, if held, will be April 29, 2002. At the hearing, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on April 29, 2002. The hearing may adjourn earlier than 8:00 p.m. if all of the speakers deliver their comments before that hour. The State will participate in the public hearing, if held by EPA, on this subject.

Requests for a public hearing must be in writing and must be received by the EPA contact shown in this document before the close of business on March 29, 2002, and should include a statement on the writer's reason for wanting a public hearing. EPA will determine, within twelve calendar days of the date by which requests must be received, whether a public hearing is warranted. After twelve days, anyone may contact the EPA person listed in the **FOR FURTHER INFORMATION CONTACT** section to find out if a public hearing will be held.

ADDRESSES: Written comments and requests for a public hearing should be sent to Ms. Heidi Hall, Chief, Office of Pollution Prevention and Solid Waste, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. Comments may also be submitted electronically by sending electronic mail (e-mail) through the Internet to: hall.heidi@epa.gov. Comments in electronic format should clearly identify the subject matter. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The public hearing, if held, will be at the Joeten-Kiyu Public Library in Susupe, Saipan, CNMI. Copies of the CNMI's application for adequacy determination are available at the following addresses for inspection and copying: CNMI Division of Environmental Quality, Third Floor, Morgen Building, San Jose, Saipan, CNMI, between the hours of 8:00 a.m. and 4:30 p.m., telephone 670–664–8500; and, by prior visiting arrangements, at the EPA Region IX Library, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:00 p.m., telephone 415–972–3658 or 415–972–3383 to make visiting arrangements.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Doordan, Office of Pollution Prevention and Solid Waste, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, telephone 415–972–3383, or via the Internet: *doordan.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in Section 4005 (c) (1) (C), 42 U.S.C. 6945 (c) (1) (C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has promulgated the Final State Implementation Rule

(SIR), which can be found at 40 CFR part 239. The rule specifies the requirements which State programs must satisfy to be determined adequate.

EPA interprets the requirement for states to develop "adequate" programs for permits or other forms of prior approval and conditions to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in it jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in Section 7004 (b) of RCRA, 42 U.S.C. 6974 (b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the requirements of the SIR. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. CNMI

On September 19, 2001 EPA Region IX received the CNMI's MSWLF Permit Program application for adequacy determination. Region IX reviewed the application, submitted comments to the CNMI, and requested supplementary information about the state program implementation. The CNMI addressed EPA's comments, provided the requested additional information, and submitted a revised narrative portion of the final application for adequacy determination on January 4, 2002. Region IX has reviewed the CNMI's final application and has tentatively determined that all portions of the CNMI's MSWLF permit program meet the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The CNMI has three municipal solid waste dumps that are currently out of compliance with the federal criteria for MSWLFs: the Puerto Rico Dump (PRD) on Saipan, one dump on Tinian, and one dump on Rota. The CNMI has developed a schedule for closure of the PRD and construction of a new MSWLF on Saipan. The federal regulations do not allow location of a landfill in a seismic zone without an approved State program. As the entire island of Saipan is considered a seismic zone, the CNMI intends to utilize the flexibility provisions afforded to approved states under particular circumstances to construct a new MSWLF in a seismic impact zone and to use an alternative landfill liner.

During the application review process, EPA expressed concern about the CNMI's staffing capacity and anticipated schedule for bringing the dumps on Tinian and Rota into compliance with federal criteria. On January 4, 2002, the CNMI sent EPA a supplement to the original application with additional information on CNMI commitments to maintaining adequate staffing levels to oversee the program and to developing integrated solid waste management and dump closure plans for Tinian and Rota.

The public may submit written comments on EPA's tentative determination until April 29, 2002. Copies of the CNMI's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on this tentative determination that are received during the public comment period and during any public hearing, if a hearing is held. Issues raised by those comments may be the basis for a determination of inadequacy for the CNMI's program. EPA will make a final decision on approval of the CNMI's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005 (a) of RCRA, 42 U.S.C. 6945 (a), provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Administrative Requirements

A. Compliance With Executive Order 12866

Executive Order 12866 requires Office of Management and Budget review of "significant regulatory actions." Significant regulatory actions are defined as those that (1) have an annual effect on the economy of $100 million or more or adversely affect a sector of the economy, including state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is not a "significant regulatory action" and is not subject to the requirements of Executive Order 12866.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605 (b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates and Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. The EPA has determined that the approval action being promulgated does not include a federal mandate that may result in costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action.

D. Executive Order 12875

Executive Order 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since this final federal action approves preexisting requirements of state law, no new unfunded mandates result from this action. See also the discussion under C, above, Unfunded Mandates Act.

E. Executive Order 13045

Executive Order 13045, effective April 21, 1997, concerns protection of children from environmental health and

safety risks, and applies to regulatory action that is "economically significant" in that such action may result in an annual effect on the economy of $100 million or more. The EPA has determined that the approval action being promulgated will not have a significant effect on the economy. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, Executive Order 13045 does not apply to this action.

F. Executive Order 12898

Executive Order 12898 requires agencies to consider impacts on the health and environmental conditions in minority and low-income communities with the goal of achieving environmental justice. This tentative determination is consistent with Executive Order 12898.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: January 23, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–4648 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7150–3]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), The Board of Scientific Counselors (BOSC), will hold an Executive Committee Teleconference.

DATES: The teleconference will be held on March 26, 2002.

ADDRESSES: On Tuesday, March 26, 2002, the teleconference will begin at 1 p.m. and will adjourn at 3 p.m. All times noted are Eastern Time.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCER (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

SUPPLEMENTARY INFORMATION: Agenda items to include, but not limited to: Discussion of BOSC Subcommittee Review Reports of ORD Laboratories and Centers. The teleconference is open to the public. Any member of the public wishing to speak on the teleconference should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

Dated: February 14, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–4649 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–1064; FRL–6818–9]

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 all food commodities.

DATES: Comments, identified by docket control number PF–1064, must be received on or before March 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1064 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Biopesticides and Pollution Prevention Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9071; e-mail address: downing.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1064. 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–1064 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–1064. 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.

February 15, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention 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 petitioners. 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.

EPA has received a pesticide petition [1F6271] from Bird Shield Repellent Corporation, P.O. Box 785, Pullman, WA 99163, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an exemption from the requirement of a tolerance for the biochemical pesticide methyl anthranilate for all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Bird Shield Repellent Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Bird Shield Repellent Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA position and not the position of the petitioner.

Bird Shield Repellent Corporation

1F6271

A. Product Name and Proposed Use Practices

The commercial name for the end product containing methyl anthranilate (MA) is Bird Shield Repellent, EPA Reg. No. 66550–1. The product was approved by EPA as a bird repellent for use on cherries, blueberries and grapes on April 26, 1995. It was further approved by the Agency for use on corn and sunflowers in June 2001. The active ingredient, methyl anthranilate, is a natural constituent of concord and heavy red grapes. It is listed by the U.S. Food and Drug Administration (FDA) as

a flavoring compound under 21 CFR 182.60 and is classified as a Generally Recognized as Safe (GRAS) compound by the Expert Panel of the Flavoring and Extract Manufacturer's Association (FEMA No. 2682). An exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR part 180 became effective on April 26, 1995 (60 FR 20432) (FRL–4941–8), and for corn and sunflowers on June 8, 2001 (66 FR 30822) (FRL–6780–9).

The mode of action is physical whereby the repellent irritates the bird's taste buds, olfactory sensors and skin. Methyl anthranilate is sprayed in a water solution at a rate of 0.283 lb. (131.66 g.) per acre to agricultural crops approximately 15 and 7 days before harvest to control pest bird depredation. Applications to the crop can be applied up to 2 days before harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Methyl anthranilate is a common component of Concord and other red grapes as well as neroli, ylang-ylang, bergamot, jasmine an other essential oils. It is synthetically obtained by esterifying anthranilic acid with CH_3OH in the presence of HCL. In its crystalline form, it is slightly soluble in water, and freely soluble in alcohol or ether. Methyl anthranilate is commonly used as a perfume for ointments, cosmetics and a flavoring agent in confectionery products, drugs and beverages. Methyl anthranilate readily volatilizes under ultraviolet (uv) light and elevated temperatures.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residue studies, using gas chromatograph and mass spectrometry, show no residues at the time of harvest for any of the agricultural crops treated with the repellent chemical. No residues of methyl anthranilate are expected to occur at the time of harvest, because of its volatility under sunlight and elevated temperatures, and thus the purpose for proposing an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The analytical method for detecting and measuring the levels of the residue is described above.

C. Mammalian Toxicological Profile

Methyl anthranilate is approved by the FDA for food use as an artificial flavoring and fragrance agent. Bird Shield Repellent Corporation has reviewed the acute toxicological studies associated with these approvals, and conducted additional studies for verification. Summaries of these studies are presented below:

1. *Mammalian.* Methyl anthranilate exhibits little or no mammalian toxicity. Methyl anthranilate metabolizes in the intestine when consumed. No toxicity was observed in acute oral toxicity studies. Values for methyl anthranilate were estimated to be greater than 5,000 milligrams/kilograms (mg/kg) in oral toxicity and 2,000 mg/kg in dermal toxicity studies using rats (Toxicity Category IV). Whole body inhalation studies, for the same species, was determined to be greater than 2.24 mg/L. Primary eye irritation was classified as severe and slightly irritating to the skin with rabbits. Based on these studies, Bird Shield Repellent Corporation has concluded that methyl anthranilate poses no unique or additional risk to children or infants, and has proposed an exemption from the requirement of a tolerance for methyl anthranilate.

2. *Avian.* Methyl anthranilate exhibits little or no avian toxicity. Its irritating properties to avian species preclude its ingestion. Acute oral toxicity was determined to be beyond the limit dose of 2,000 mg/kg of body weight for Bobwhite quail when administered via gelatin capsules. Acute lethal dietary concentrations, where Mallard ducklings were force-fed methyl anthranilate, was determined to be greater than 5,249 mg/kg of diet. Under current EPA criteria, methyl anthranilate is considered to be "practically non-toxic" to mallard ducklings. Based on these studies, Bird Shield Repellent Corporation has concluded that methyl anthranilate poses no unique or additional risk to avian species, and has proposed an exemption from the requirement of a tolerance for methyl anthranilate.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* The active ingredient in Bird Shield, methyl anthranilate, is applied at very low rates of 0.29 lbs. (131.7 g.) per acre. Because of the low use rates no active ingredient residues are detectable using available methods on treated crops, even immediately after application. Because of its volatility, when exposed to uv light and elevated temperatures, no residues are expected at harvest. Dietary exposure to methyl anthranilate, via consumption of the treated food or feed, has been determined to be very negligible if any at all. The product's other ingredients, which represent about 75% of the formulation, consist of food grade substances determined to be GRAS by FDA

ii. *Drinking water.* The active ingredient in Bird Shield is unlikely to occur in drinking water given the very low application rate of the product to the crop and its rapid degradation in soil.

2. *Non-dietary exposure.* The Bird Shield Repellent Corporation believes that the potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use is primarily to the external, non-edible portions of the crop. This mode of application would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased non-dietary exposure of methyl anthranilate is not considered likely, because of the low use rates, and the lack of persistence of the active ingredient in the earth's environment.

E. Cumulative Exposure.

Consideration of a common mode of toxicity is not appropriate given there is no indication of mammalian toxicity of methyl anthranilate, and no information that indicates that the toxic effects would be cumulative with any other compounds. Moreover, methyl anthranilate does not exhibit a toxic mode of action in its target species.

F. Safety Determination

1. *U.S. population.* Methyl anthranilate's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals, in which the chemical caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus, the aggregate exposure to methyl anthranilate over a lifetime should pose negligible risks to human health.

2. *Infants and children.* Based on the lack of toxicity and low exposure there is a reasonable certainty of no harm to infants, children or adults will result from aggregate exposure to the chemical's residues. Exempting methyl anthranilate from the requirement of a tolerance should pose no significant risk to humans or their environment.

G. Effects on the Immune and Endocrine Systems

Bird Shield Repellent Corporation, has no information to suggest that methyl anthranilate will adversely affect the immune or endocrine systems.

H. Existing Tolerances

An exemption from the requirement of a tolerance for the active ingredient, methyl anthranilate for cherries, blueberries and grapes under 40 CFR

part 180 became effective on April 26, 1995 (60 FR 20432) and extended to corn and sunflowers on June 8, 2001 (66 FR 30822).

I. International Tolerances

Bird Shield Repellent Corporation is not aware of any tolerances, exemptions from tolerance or maximum residue levels issued for methyl anthranilate outside of the United States.

[FR Doc. 02–4650 Filed 2–26–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59382; FRL–6825–3]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–02–0005. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Jamesine Rogers, New Chemicals Notice Management Branch, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3453; e-mail address: *rogers.jamesine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–59382. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–02–0005

Date of Receipt: December 6, 2001.

Notice of Receipt: January 17, 2002, (67 FR 2436) (FRL–6819–9).

Applicant: CBI.

Chemical: (G) Halogenated alkanesulfonic acid ester.

Use: (G) Intermediate.

Production Volume: CBI.

Number of Customers: 0 (intermediate).

Test Marketing Period: 120 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified concerns for ecotoxicity, lung and liver toxicity, and irritation and corrosion of the mucous membranes. However, expected human and environmental exposure to this substance is minimal based upon low production volume, adequate hazard communication instruments, use of

personal protective equipment (PPE), and minimal releases to water. Therefore, the test market activities will not present an unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 11, 2002.

Rebecca S. Cool,

Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–4303 Filed 02–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59383; FRL–6825–2]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–02–0006. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Jamesine Rogers, New Chemicals Notice Management Branch, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3453; e-mail address: *rogers.jamesine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–59383. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–02–0006

Date of Receipt: December 6, 2001.

Notice of Receipt: January 17, 2002, (67 FR 2436) (FRL–6819–9).

Applicant: CBI.

Chemical: (G) Ester of a disubstituted heteropolycyclic carboxylic acid.

Use: (G) Coating component.

Production Volume: CBI.

Number of Customers: CBI.

Test Marketing Period: 120 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified concerns for developmental toxicity, mutagenicity and photosensitization which are attributed to phenothiazines as a class. There is also concern for oncogenicity based upon an additional class with which the TME substance is associated. However, production volume is low and minimal inhalation is expected. Concern for potential ecotoxicity is low based upon low toxicity of the TME substance. Therefore, the test market activities will not present an unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 11, 2002.

Rebecca S. Cool,

Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–4304 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59381; FRL–6825–4]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–02–0004. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jamesine Rogers, New Chemicals Notice Management Branch, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3453; e-mail address: *rogers.jamesine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–59381. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–02–0004

Date of Receipt: December 6, 2001.

Notice of Receipt: January 17, 2002, (67 FR 2436) (FRL–6819–9).

Applicant: CBI.

Chemical: (G) Disubstituted heteropolycyclic carboxylic acid, alkyl ester.

Use: (G) Intermediate.

Production Volume: CBI.

Number of Customers: 0 (intermediate).

Test Marketing Period: 120 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified concerns, based on the physical/chemical properties of the test substance and test data on structurally similar substances, that the substance is potentially a persistent, bioaccumulative, and toxic (PBT) substance. The Agency does not expect the test substance to biodegrade or for there to be any incineration products of concern. In addition, the substance is a chemical intermediate and is not expected to be present in the final test market substance or product. Although this substance is a PBT, production volume and inhalation exposure of the intermediate are expected to be low, and there are no expected direct releases to the environment. Therefore, the test market activities will not present an unreasonable risk of injury to human health or the environment

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 11, 2002.

Rebecca S. Cool,

Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–4305 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51983; FRL–6824–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 10, 2002, to January 23, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51983 and the specific PMN number, must be received on or before March 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51983 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/.* On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51983. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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–51983 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), 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 in this unit. 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–51983 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from Januray 10, 2002, to January 23, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 49 PREMANUFACTURE NOTICES RECEIVED FROM: 01/10/02 TO 01/23/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0242	01/10/02	04/10/02	Ciba Specialty Chemicals Corporation	(G) Textile dye	(G) Naphthalenesulfonic acid, amino-substituted phenyl amino halo-1,3,5-triazinamino-substituted phenyl azo hydroxy-, sodium salt compound
P–02–0245	01/10/02	04/10/02	CBI	(G) Antistatic agent for synthetic fiber	(G) Amino alkyl amide ethyl sulfate
P–02–0246	01/10/02	04/10/02	CBI	(G) Binder resin	(G) Acrylic polyol
P–02–0248	01/10/02	04/10/02	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 1-hexanol, 3-mercapto, 1-acetate

I. 49 PREMANUFACTURE NOTICES RECEIVED FROM: 01/10/02 TO 01/23/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0249	01/10/02	04/10/02	CBI	(G) Raw material for production of polyols	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, me esters, epoxidized
P–02–0250	01/10/02	04/10/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P–02–0251	01/10/02	04/10/02	Shell Chemical Company	(S) Drilling fluid component fuel	(S) Hexadecane, branched
P–02–0252	01/10/02	04/10/02	Shell Chemical Company	(S) Drilling fluid component fuel	(S) Pentadecane, branched
P–02–0253	01/11/02	04/11/02	CBI	(G) Polymer raw material	(G) Substituted alkyl acrylate
P–02–0254	01/11/02	04/11/02	Arch Chemicals, Inc.	(S) Use as an ingredient in waterborne urethane	(G) Carboxyl polyol triethylamine salt
P–02–0255	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester polyether isocyanate
P–02–0256	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester polyether isocyanate
P–02–0257	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester polyether isocyanate
P–02–0258	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester polyether isocyanate
P–02–0259	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester isocyanate
P–02–0260	01/15/02	04/15/02	CBI	(S) Hot-melt moisture-cure adhesives for book binding. (volumes indicated are the maximum for each substance)	(G) Polyester isocyanate
P–02–0261	01/15/02	04/15/02	Clariant LSM (America) Inc.	(S) Silicons product intermediate	(G) Piperidinol
P–02–0262	01/15/02	04/15/02	Mississippi Polymer Technologies, Inc.	(G) Destructive use in plastic manufacture	(G) Halogenated benzophenone; substituted benzophenone
P–02–0263	01/15/02	04/15/02	Hercules Incorporated	(G) Water soluble cement additive	(G) Acrylate/allylether copolymer
P–02–0264	01/16/02	04/16/02	Haarmann & Reimer	(G) Additive in consumer products dispersive use	(S) 3-hexanethiol, 1-methoxy-
P–02–0265	01/15/02	04/15/02	Quest International Fragrances Co.	(S) Fragrance raw material	(S) Mixture of: 1,3-dioxane, 5-methyl-2-(2-methylpropyl)-, cis; 1,3-dioxane, 5-methyl-2-(2-methylpropyl)-, trans
P–02–0266	01/15/02	04/15/02	Vantico Inc.	(S) Epoxy curing agent	(G) Phenol, 4,4′-(1-methylethylidene)bis, polymer with (chloromethyl)oxirane, reaction products with an epoxy resin and octahydro-4,7-methano-1h-indenedimethanamine
P–02–0267	01/16/02	04/16/02	Hercules Incorporated	(G) Water soluble cement additive	(G) Acrylate/allylether copolymer
P–02–0268	01/16/02	04/16/02	Solutia Inc.	(S) Cross linking resin for industrial paints	(G) Acrylic copolymer
P–02–0269	01/17/02	04/17/02	Jarchem Industries, Inc.	(G) Thermo-sensitive water-absorbing/desorbing polymer to soil water-holding agent	(G) Thermo-sensitive water-absorbing desorbing polymer (acrylic polymer)
P–02–0270	01/22/02	04/22/02	Solutia Inc.	(S) Dispersant for industrial coatings	(G) Acrylic copolymer
P–02–0271	01/18/02	04/18/02	CBI	(S) Viscosity modifier/dispersing agent for pigments in inks and coatings	(G) Vinylpyrrolidinone-vinylimidazole-copolymer
P–02–0272	01/22/02	04/22/02	Seppic, Inc.	(S) Solubilizer for industrial and institutional cleaning formulations	(S) D-glucopyranose, oligomeric, bu glycosides
P–02–0273	01/22/02	04/22/02	Seppic, Inc.	(S) Foaming detergent for institutional and industrial cleaning formulations	(S) D-glucopyranose, oligomeric, C_{10-12}–alkyl glycosides
P–02–0274	01/22/02	04/22/02	Seppic, Inc.	(S) Industrial and institutional drain cleaning	(S) D-glucopyranose, oligomeric, C_{12-16}–alkyl glycosides
P–02–0275	01/18/02	04/18/02	Solutia Inc.	(S) Cross linking resin for industrial paints	(G) Acrylic copolymer

I. 49 PREMANUFACTURE NOTICES RECEIVED FROM: 01/10/02 TO 01/23/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0276	01/18/02	04/18/02	Eastman Chemical Company	(G) Coating and paint vehicle	(G) Styrene-acrylic copolymer
P–02–0277	01/22/02	04/22/02	CBI	(S) Inks; coatings	(G) Polyester acrylate
P–02–0278	01/18/02	04/18/02	Burlington Chemical Company, Inc.	(S) Improve leaf retention in alfalfa hay	(S) Fatty acids, C_{16-18} and C_{18}–unsaturated, branched and linear, esters with polyethylene glycol
P–02–0279	01/22/02	04/22/02	Solutia Inc.	(S) Curing resin for industrial coatings	(G) Phenolic resin
P–02–0280	01/18/02	04/18/02	CBI	(G) Chemical intermediate	(G) Dialkylphenoxyalkyl carboxylate, metal salt
P–02–0281	01/22/02	04/22/02	Basf Corporation	(S) Processing aid for leather tanning	(G) Diglyceride fatty acid, acetylated
P–02–0282	01/22/02	04/22/02	CBI	(G) Curing agent	(G) Amino silane ester
P–02–0283	01/22/02	04/22/02	Seppic, Inc.	(S) Wetting agent (component) for use in water-based drilling muds; solubilizer for industrial and institutional cleaners	(S) D-glucopyranose, homopolymer, 2-ethylhexyl glycosides
P–02–0284	01/22/02	04/22/02	Seppic, Inc.	(S) Foaming and wetting surfactant for institutional and industrial cleaning; oil well borehole emulsifier and cleaner	(S) D-glucopyranose, oligomeric, branched undecyl glycosides
P–02–0285	01/23/02	04/23/02	R. T. Vanderbilt Company, Inc.	(S) Functional filler for polymer systems	(S) Silane, trimethoxy[3-oriranylmethoxy]propyl-, reaction products with wollastonite (ca(sio3)
P–02–0286	01/23/02	04/23/02	Ciba Specialty Chemicals Corporation, Textile Effects	(G) Textile dye	(G) Naphthalenedisulfonic acid, amino halo alkyl sulfonyl alkyl amino-1,3,5-triazin sulfophenyl azo hydroxy substituted phenyl azo sodium salt
P–02–0287	01/23/02	04/23/02	Basf Corporation	(S) Processing aid for leather tanning	(G) Ethoylated alkyl alcohol
P–02–0288	01/23/02	04/23/02	CBI	(G) Dehydration and demulsification agent	(G) Alkoxylated fatty acid esters
P–02–0289	01/23/02	04/23/02	UBE America Inc.	(S) Raw material of polyurethane	(S) Carbonic acid, dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0293	01/23/02	04/23/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic polymer
P–02–0294	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0295	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0296	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 31 NOTICES OF COMMENCEMENT FROM: 01/10/02 TO 01/23/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–1057	01/16/02	11/12/01	(G) Azo dye, copper complex
P–00–1151	01/15/02	10/29/01	(G) Poly(ester-ether)
P–00–1213	01/10/02	10/16/01	(G) Polyester isocyanate prepolymer
P–01–0077	01/17/02	11/02/01	(G) Disubstituted benzenedicarboxylic acid
P–01–0346	01/18/02	11/28/01	(G) Acrylic polymer
P–01–0350	01/16/02	10/26/01	(G) Polydialkylsiloxane with polyglucoside containing groups
P–01–0383	01/17/02	11/04/01	(S) 1,2-benzenedicarboxylic acid, di-C_{6-14}–branched and linear alkyl esters
P–01–0407	01/10/02	10/05/01	(G) Polydimethylsiloxane with aminoalkyl and polyether groups
P–01–0472	01/17/02	12/03/01	(G) Modified polymeric diphenylmethane diisocyanate prepolymer
P–01–0646	01/17/02	11/30/01	(G) Substituted trialkylalkanaminium halide
P–01–0695	01/17/02	12/10/01	(G) Acrylic polymer
P–01–0733	01/15/02	11/05/01	(G) Alkyl carboxylate salt
P–01–0745	01/16/02	11/16/01	(G) Methacrylate polymer
P–01–0751	01/15/02	11/28/01	(G) Supported metallocene catalyst.
P–01–0783	01/18/02	12/12/01	(G) Aminophosphonate
P–01–0785	01/15/02	11/05/01	(G) Alkyldioic acid polymer with carboxy-alkyl-carbocycle-alkanoic acid, alkenedioic anhydride, and 3-oxapentane-1,5-diol
P–01–0787	01/14/02	12/19/01	(G) Modified tall-oil pitch intermediate
P–01–0788	01/14/02	12/20/01	(G) Modified tail-oil pitch intermediate

II. 31 NOTICES OF COMMENCEMENT FROM: 01/10/02 TO 01/23/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0789	01/14/02	12/20/01	(G) Modified tall-oil pitch
P–01–0805	01/14/02	11/12/01	(G) Alkylamine, alkoxylated
P–01–0806	01/14/02	11/16/01	(G) Alkylamine initiated, alkylene oxide polymer
P–01–0848	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0849	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0850	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0851	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0852	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0853	01/22/02	01/21/02	(G) Hydroxy functional acrylic emulsion
P–01–0874	01/18/02	12/20/01	(G) Urethane polymer
P–01–0875	01/18/02	12/20/01	(G) Urethane polymer salt
P–97–0064	01/10/02	11/28/01	(S) Nitriles, rosin
P–98–1223	01/17/02	12/29/01	(S) 1,3-benzenedicarboxylic acid, polymer with alpha, alpha'-[(methylethylidene)di-4,1-phenylene]bis[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and 2,2'-oxybis[ethanol]

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 5, 2002.

Carolyn Thornton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–4307 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–45–A (Auction No. 45); DA 02–265]

Auction No. 45 Cellular Licenses for Rural Service Areas Scheduled for May 29, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of three cellular Rural Service Area licenses to commence on May 29, 2002 (Auction No. 45) and seeks comment on auction procedures.

DATES: Comments are due on or before February 19, 2002 and reply comments are due on or before February 26, 2002.

ADDRESSES: The Wireless Telecommunications Bureau ("Bureau") requires that all comments and reply comments be sent by electronic mail to the following address: *auction45@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 45 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Legal questions: Denise Coca (202) 418–0660. For general auction questions: Jeff Crooks (202) 418–0660, Lisa Stover (717) 338–2888. For service rule questions: Dwain Livingston (202) 418–1338.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 45 Comment Public Notice* released February 5, 2002. The complete text of the *Auction No. 45 Comment Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 45 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

1. By the *Auction No. 45 Comment Public Notice*, the Bureau announces the auction of three cellular Rural Service Area (RSA) licenses to commence on May 29, 2002 ("Auction No. 45"). This auction will include cellular frequency block A in each of the following RSA markets: 332—Polk, AR; 582—Barnes, ND; and 727—Ceiba, PR. A description of these licenses is included as Attachment A of the *Auction No. 45 Comment Public Notice*.

2. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 45.

II. Auction Structure

A. Simultaneous Multiple Round Auction Design

3. The Bureau proposes to award all licenses included in Auction No. 45 in a single, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

4. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each cellular RSA license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to

bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 45, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$0.0125 * MHz * License Area Population with a minimum of $1,000 per license.

5. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 45 Comment Public Notice*. The Bureau seeks comment on this proposal.

6. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 45 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate.

8. The Bureau proposes a single stage auction with the following activity requirement. In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. A bidder's activity will be the sum of the bidding units associated with (i) licenses upon which it places bids during the current round, and (ii) licenses upon which it is the standing high bidder. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility. The Bureau seeks comment on this proposal.

D. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

10. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

11. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described previously. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

13. The Bureau proposes that each bidder be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth previously. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 45, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

III. Bidding Procedures

A. Round Structure

15. The Commission will conduct Auction No. 45 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Prospective bidders concerned about their access to the Internet may want to establish a connection to the FCC Wide Area Network as a backup. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

16. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably

balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

19. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

20. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 45. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

21. Specifically, for Auction No. 45, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$0.0250 * MHz * License Area Population with a minimum of $1,000 per license.

The specific minimum opening bid for each license available in Auction No. 45 is set forth in Attachment A of the *Auction No. 45 Comment Public Notice*. Comment is sought on this proposal.

22. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the cellular spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

23. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license.

24. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described further. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (i.e., the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

25. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained further.

26. For Auction No. 45, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as the Bureau has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment,* not to be confused with the *bid increment,* for each license based on a weighted average of the activity received on that particular license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

27. In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

Equations

$A_i = (C * B_i) + ((1–C) * A_{i-1})$
I_{i+1} = smaller of $((I + A_i) * N)$ and M
$X_{i+1} = I_{i+1} * Y_i$
Where,
A_i = activity index for the current round (round i)
C = activity weight factor
B_i = number of bids in the current round (round i)
A_{i-1} = activity index from previous round (round $i-1$), A_0 is 0
I_{i+1} = percentage increment for the next round (round i+1)
N = minimum percentage increment or percentage increment floor
M = maximum percentage increment or percentage increment ceiling
X_{i+1} = dollar amount associated with the percentage increment
Y_i = high bid from the current round

28. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over $10,000, to the nearest hundred if it is under $10,000 but over $1,000, or to the nearest ten if it is below $1,000.

Examples

License 1
C = 0.5, N = 0.1, M = 0.2
Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of $((1 + 1) * 0.1) = 0.2$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1{,}000{,}000 = \$200{,}000$

iii. Minimum acceptable bid for round 2 = $1,200,000

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of $((1 + 2) * 0.1) = 0.3$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * \$2{,}000{,}000 = \$400{,}000$

iii. Minimum acceptable bid for round 3 = $2,400,000

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

I_4 = The smaller of $((1 + 1.5) * 0.1) =$ 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * \$2{,}400{,}000 = \$480{,}000$

iii. Minimum acceptable bid for round 4 = $2,880,000

29. As stated previously, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described previously, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

30. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

31. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. The Bureau seeks comment on these proposals.

D. High Bids

32. At the end of a bidding round, the Automated Auction System will determine the high bid on each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. Remaining bidders will be able to submit higher bids in subsequent rounds.

33. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

34. For Auction No. 45, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer "remove" a bid.

35. A high bidder may withdraw its standing high bids from previous rounds using the, withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

36. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

37. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 45 to withdrawing standing high bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in the round in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

38. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 45, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

39. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

40. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 45:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing

a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

41. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

IV. Conclusion

42. Comments are due on or before February 19, 2002, and reply comments are due on or before February 26, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction45@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 45 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

43. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

44. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–4743 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–361]

Current and Future Spectrum Use by the Energy, Water, and Railroad Industries

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the FCC seeks comment on the findings of the National Telecommunications and Information Administration Report, released January 30, 2002, titled "Current and Future Spectrum Use by the Energy, Water, and Railroad Industries". Congress requires the FCC to submit a report to Congress addressing any needs identified from NTIA's Report. Comments received on NTIA's report will aid the Commission in preparing its report to Congress.

DATES: Written comments are due on or before March 6, 2002 and reply comments are due on or before March 18, 2002.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–325, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: . John J. Schauble, Esq., Chief, Policy and Rules Branch, Public Safety and private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680, or via e-mail to *jschaubl@fcc.gov*.

SUPPLEMENTARY INFORMATION: The full text of the NTIA Report, comments and reply comments will be available for public inspection and duplication during regular business hours at the FCC Reference Information Center (RIC) of the Consumer Information Bureau (CIB), Federal Communications Commission, 445 Twelfth Street, SW., Room CY–A257, Washington, DC, 20554. The full text of the NTIA Report is also available at NTIA's Web site at *http://www.ntia.doc.gov/osmhome/reports.html*. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, DC 20036, telephone (202) 863–2393; facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. For further information regarding the public reference file for the Report contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418–1355.

1. On January 30, 2002, the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) released a Report entitled "Current and Future Spectrum Use by the Energy, Water, and Railroad Industries" (NTIA Report). This report was mandated by Public Law Number (PL No.) 106–533. Under this legislation, NTIA was directed to submit to the U.S. Congress a study of current and future spectrum use by providers of energy, water, and railroad services to protect and maintain the nation's critical infrastructure. The statute also requires the Federal Communications Commission (FCC) to submit a subsequent report to Congress addressing any needs identified in NTIA's study.

2. The NTIA Report contains a compilation of the responses received to its "Request for Comments" from members of the utilities industry and various trade organizations. In its "Request for Comments," NTIA sought information on any issue of fact, law or policy that might inform the agency about spectrum requirements of the industry taking into account growth, new technology, and future applications. NTIA also received information from federal governmental departments and agencies that exercise oversight of energy, water and railroad industries, as well as from industry certified frequency coordinators. The Report also reflects the information received from members of the Interdepartment Radio Advisory Committee (IRAC). Information also was

obtained from the Public Safety Wireless Network (PSWN).

3. In the NTIA Report, NTIA found that energy, water and railroad services are primary components of the nation's critical infrastructure and that the continued use of spectrum is essential to the current and future operations of these industries. The NTIA Report submits that without adequate radio spectrum, providers of energy, water and railroad services would be unable to address major service interruptions due to natural disaster, equipment malfunctions or in some cases, terrorist activities. According to NTIA, these industries believe that additional spectrum is needed—specifically for exclusive use—because of existing congestion problems. Commenters stated that commercial wireless services do not adequately service these industries' needs due to issues of compatibility, reliability, and cost-effectiveness. The NTIA Report also finds a lack of consensus among the commenters as to where new spectrum can be reallocated or obtained. NTIA received limited response on the issue of whether these industries use spectrum-efficient technology. NTIA concludes that it is unable to validate the specific spectrum requirements of the energy, water and railroad industries. It suggests, however, that the industries' needs may be addressed by use of advanced communications technology or newly allocated frequency bands.

4. All Parties should reference the NTIA report including the DA number of this *Public Notice,* a copy of each filing should be sent to (1) Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, DC 20036, telephone (202) 863–2393; (2) John J. Schauble, Esq., Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW., Room 4–C336, Washington, DC 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer Information Bureau, Reference Information Center, 445 Twelfth Street, SW., Room CY–B529, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–4798 Filed 2–26–02; 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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Friday, March 1, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Part 369—Proposal to Amend Rule Concerning Prohibition Against Using Interstate Branches Primarily for Deposit Production.

Discussion Agenda

Memorandum re: Notice of Proposed Rulemaking for BIF Assessment Rates for the Second Semiannual Period of 2002.

The meeting will be held in the Board-room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements. Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 22, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–4742 Filed 2–25–02; 9:41 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting

AGENCY: Federal Election Commission

* * * * *

DATE & TIME: *Thursday, February 28, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The following items have been added to the agenda:

Draft Advisory Opinion 2002–01: Harry Kresky on behalf of Lenora B. Fulani and James Mangia

Draft Advisory Opinion 2002–02: Eric Gally

Revised Campaign Guide for Nonconnected Political Committees

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–4864 Filed 2–25–02; 3:14 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 011637–006.

Title: AMPAC Cooperative Working Agreement.

Parties: TMM Lines Limited, LLC, Hamburg-Süd, Maruba S.C.A.

Synopsis: The proposed amendment revises the number of vessels to be provided by each party and extends the minimum duration of the agreement.

Agreement No.: 011733–003.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk Sealand, Alianca Navegacao e Logistica Ltda., CMA CGM, S.A., Hapag-Lloyd Container Linie, GmbH, Hamburg-Süd, Mediterranean Shipping Company, S.A., P&O Nedlloyd Limited, Safmarine Container Lines N.V., United Arab Shipping Company (S.A.G.).

Synopsis: The proposed amendment adds United Arab Shipping Company as a shareholding member of the agreement.

Agreement No.: 011746–002.

Title: COSCO/KL/YMUK Asia/U.S. Pacific Coast Slot, Allocation Agreement.

Parties: COSCO Container Lines Company, Limited, Kawasaki Kisen Kaisha, Ltd., Yangming(UK) Ltd.

Synopsis: The proposed amendment expands the geographic scope of the agreement to include ports in Malaysia, revises the vessel strings the parties are deploying under the agreement, and makes adjustments to the parties' space allocations. The parties request expedited review.

Agreement No.: 011790.

Title: Dole Ocean Cargo Express/King Ocean Services Limited, Slot Allocation Agreement.

Parties: Dole Ocean Cargo Express, Inc., King Ocean Services Limited.

Synopsis: Under the proposed agreement, Dole will charter space to King Ocean in the trade between the ports of Port Everglades, Florida, and Puerto Moin, Costa Rica.

By Order of the Federal Maritime Commission.

Dated: February 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–4652 Filed 2–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–01]

Hellmann Worldwide Logistics, Inc. and Pelorus Ocean Line, Ltd. v. Cosco Container Lines Company Limited; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Hellmann Worldwide Logistics, Inc., ("Hellmann") and Pelorus Ocean Line, Ltd., ("Pelorus")(collectively "Complainants") against Cosco Container Lines Company Limited ("COSCO").

Complainants state that Pelorus and COSCO entered into certain service contracts (SCs) pursuant to which Pelorus booked cargo. COSCO subsequently invoiced Hellmann, as Pelorus' agent, amounts differing from the SCs' freight rates. Pelorus paid COSCO for these invoices through its agent Hellmann.

Complainants contend that COSCO violated section 10(b)(2)(A) of the Shipping Act of 1984 ("Act") by charging rates differing from those listed in the effective SCs or tariff, thus providing service that is not in accordance with a tariff published or a service contract entered into under section 8 of the Act; section 10(b)(10) of the Act by unreasonably refusing to deal or negotiate and in refusing to return Complainants' overpayments; and section 10(d)(1) of the Act by engaging in unjust and unreasonable practices with respect to the filing of service contract amendments, collection of freight charges and failure to reimburse freight overpayments.

Complainants ask that COSCO be compelled to answer their charges, and that the Commission issue an order holding COSCO's actions unlawful and in violation of the Act and compelling COSCO to pay them $184,802.80 in reparations, in addition to interest, costs and attorney" fees, and such other and further relief the Commission deems just and proper.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 21, 2003, and the final decision of the Commission shall be issued by June 23, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–4651 Filed 2–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. R&G Financial Corporation, Hato Rey, Puerto Rico; to acquire The Crown Group, Inc., Casselberry, Florida, and thereby indirectly acquire Crown Bank, a Federal Savings Bank, Casselberry, Florida, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–4549 Filed 2–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting

period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—02/04/2002			
20020319	Cumulus Media Inc	DBBC, L.L.C	Mr. Juliet Broadcasting, Inc. Phoenix Broadcasting Inc.
20020338	Deutsche Bank AG	Zurich Financial Services	Zurich Scudder Investments, Inc.
20020373	Stilwell Financial Inc	The Prudential Insurance Company of America.	Enhanced investment Technologies, Inc.
20020378	Caterpillar, Inc	FCC Equipment Financing, Inc	FCC Equipment Financing, Inc.
20020394	Advance Voting Trust	PRIMEDIA Inc	PRIMEDIA Magazine Finance, Inc. PRIMEDIA Magazines Inc. PRIMEDIANet Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/05/2002			
20020322	General Electric Company	Frederick B. Sontag	Unison Industries, Inc.
20020326	Sobel N.V	E. ON AG	SKW Gelatin & Specialties Manufacturing, LLC. SKW Gelatin & Specialties Sales, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/11/2002			
20020381	Henkel KFaA	Ecolab Inc.	Ecolab Inc
20020405	Kao Corporation	James A. Mazzotta	KMS Research, Inc.
20020406	Pharmaceutical Product Development, Inc.	Dr. Evan A. Stein	Medical Research Laboratories International, Inc.
20020407	Dr. Evan A. Stein	Pharmaceutical Product Development, Inc.	Pharmaceutical Product Development, Inc.
20020413	Forstmann Little & Co. Equity Partnership VII, L.P.	XO Communications, Inc	XO Communications, Inc.
20020414	Forstmann Little & Co. Sub. Debt & Equity Mgmt Buyout VIII.	XO Communications, Inc	XO Communications, Inc.
20020415	Carso Global Telecom, S.A. de C.V	XO Communications, Inc	XO Communications, Inc.
20020421	Providence Equity Partners IV L.P	Citigroup Inc	F&W Publications, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/13/2002			
20020408	Norsk Hydro ASA	E. ON AG	VAW aluminum AG.
20020412	WPS Resources Corporation	CH Energy Group, Inc	CH Resources, Inc.
20020422	Timothy T. Mueller & Diane P. Mueller	Oak Hill Capital Partners, L.P	Steamboat Ski & Resort Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—02/15/2002			
20020418	Greater Bay Bancorp	Alburger, Basso, de Grosz Insurance Services, Inc.	Alburger, Basso, de Grosz Insurance Services, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–4614 Filed 2–26–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Privacy Act; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: The FTC proposes a new system of records subject to the Privacy Act of 1974, as amended. This system, if adopted, would include telephone numbers and other information pertaining to individuals who have informed the Commission that they do not wish to receive telemarketing calls. System records would be disclosed to telemarketers so they may comply with the do-not-call provisions of the Commission's Telemarketing Sales Rule.

DATES: Comments must be submitted by March 29, 2002.

ADDRESSES: Submit comments to the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, "Telemarketing Rulemaking—Comment," FTC File No. R411011. Please indicate that your comment pertains to "Proposed Privacy Act System, Do-Not-Call Registry-FTC." Comments may also be submitted by electronic mail to *tsr@ftc.gov*. The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through its Web site on the Internet: www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, *atang@ftc.gov*. For information about the proposed amendments to the Commission's Telemarketing Sales Rule relating to this

proposed records system, contact Catherine Harrington-McBride, (202) 326–2452 (email: cmcbride@ftc.gov), Karen Leonard, (202) 326–3597 (email: kleonard@ftc.gov), Michael Goodman, (202) 326–3071 (email: mgoodman@ftc.gov), or Carole Danielson, (202) 326–3115 (email: cdanielson@ftc.gov), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the FTC is publishing this notice of a proposed new agency system of records, to be designated as FTC-IV–3, "Do-Not-Call Registry System-FTC." The system is intended to improve enforcement of and compliance with the requirements of the Commission's Telemarketing Sales Rule, 16 CFR Part 310, which the Commission is currently proposing to amend. *See* 67 FR 4491 (Jan. 30, 2002) (proposed amendments).

The purpose of the proposed records system, if adopted, would be to create a national registry of individuals who do not wish to receive telemarketing calls, and to make such information available to telemarketers so they may make any necessary additions, deletions, or other corrections to the do-not-call lists they keep in order to remain in compliance with the Rule. *See* proposed 16 CFR 310.4(b)(1)(iii)(B). The agency intends to compile and maintain these records in a secure electronic database designed, developed, operated, and serviced by agency and/or contractor personnel bound by the restrictions of the Privacy Act. *See* 5 U.S.C. 552a(m). The system would be under the general supervision of the Commission's Bureau of Consumer Protection, with technical support from the Commission's Division of Information and Technology Management, Office of the Executive Director.

The Commission anticipates that information collected and maintained in the proposed system would include, at minimum, telephone numbers of individuals who have notified the Commission, through certain means described below, that they do not wish to receive telemarketing calls. To the extent necessary or appropriate, other information collected and maintained in the system may include, for example: date(s) and time(s) that the individual's telephone number was placed on the registry; the individual's specific telemarketing preferences; and other identifying information that individuals may be asked to provide voluntarily (e.g., residential zip codes for system record sorting purposes). [1]

The agency expects to use automated methods to collect this information. These methods may involve, for example, a dial-in telephone system that relies on interactive voice response ("IVR" or "telephone menu") technology to answer incoming calls from individuals, coupled with automatic number identification ("ANI" or "caller identification") technology to verify the telephone number from which an individual is dialing before adding that number to the registry.

Likewise, the agency expects to use automated methods, in whole or part, to process requests from individuals seeking access to their records in the system. For example, such individuals may be seeking to confirm whether they previously registered their phone numbers with the Commission, to delete their numbers from the registry in order to permit telemarketing calls again, to modify their specific telemarketing preferences to the extent the system maintains such data, etc. In these cases, individuals will likely be asked to provide certain additional personal identifying information (e.g., name and postal or e-mail address) in order for the agency to acknowledge their access requests in writing.[2]

As described below, system records would be subject to appropriate safeguards to prevent unauthorized disclosure or tampering. The Commission is soliciting comment on whether telephone numbers or other information that may be maintained in the registry should be automatically deleted by the system after a certain period of time, even when the individual does not affirmatively delete such information from the system, or whether some other retention schedule or approach should be adopted.

Once the system is established, system records would be routinely disclosed to telemarketers or their authorized agents for purposes of correcting or supplementing their do-not-call lists, as noted earlier, so that individuals who have registered with the Commission do not receive unwanted telemarketing calls.[3] These disclosures are authorized by the Privacy Act, to the extent such disclosures are consistent with the purpose for which the Commission would be establishing the proposed system of records. *See* 5 U.S.C. 552a(a)(7), (b)(3) ("routine use"). In addition, the Commission intends that system records would be subject to certain "routine uses" that are generally applicable to other FTC records systems and are intended to facilitate Commission enforcement, administration, and compliance under applicable laws, statutes and orders.[4] These "routine uses" include, but are not limited to, the use of records, where appropriate, in law enforcement investigations or proceedings conducted by the Commission or by other agencies or authorities (e.g., to determine whether a telemarketer is complying with the do-not-call provisions of the FTC's Telemarketing Sales Rule), as well as other regulatory or compliance matters or proceedings.[5] Individuals should further be aware that Privacy Act records, like other agency records, may be subject to disclosure pursuant to court orders, requests filed by members of the public under the Freedom of Information Act (FOIA),[6] official requests by Congress or the General Accounting Office, and other uses and

[1] To the extent that the Commission intends to collect only basic registration information from individuals, such activity is exempt from review or approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501–3518. *See* 5 CFR 1320.3(h)(1).

[2] 5 U.S.C. 552a(d)(2)(A) (acknowledgment of requests). Identifying information submitted by individuals in connection with their requests would be treated and maintained as part of the Privacy Act requests and appeals system, and not the Do-Not-Call Registry system. *See* 57 FR 45678, 45701 (Oct. 2, 1992) (FTC system of records pertaining to Privacy Act requests and appeals), *full text available at* http://www.ftc.gov/foia/92sysnot-web.pdf.

[3] Although the Commission may provide data to telemarketers electronically, this activity would not fall under the definition of a Privacy Act "matching program," 5 U.S.C. 552a(a)(8), or the provisions of the Act applicable to such programs, because the data would not involve payroll or other matters covered by such programs.

[4] *See* 57 FR at 45706 (Appendix I to FTC system notice), cited *supra* note 2.

[5] These routine uses, to the extent they are discussed in Appendix I, *see supra* note 4, are also discussed in the routine uses proposed for this system and described in this notice *infra*. To the extent these uses involve the sharing of records with other agencies or authorities, the Commission may, where feasible and appropriate, redact or otherwise obtain confidentiality agreements, protective orders, or make other arrangements in order to protect against the disclosure of personally identifiable information. Such information-sharing is subject to applicable procedures set forth in the Commission's Rules of Practice (*see, e.g.*, 16 CFR 4.11) and are intended to be "routine uses" under subsection (b)(3) of the Privacy Act (i.e., consistent with the purpose for which the information is collected), and may be in addition to disclosures that the head of another agency may formally request for law enforcement purposes under the separate authority of subsection (b)(7) of the Act, 5 U.S.C. 552a(b)(7).

[6] Although Privacy Act records can become the subject of a FOIA request, the FOIA does not mandate disclosure of such records if it would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. 552(b)(6); *Department of the Air Force* v. *Rose*, 425 U.S. 352 (1976).

disclosures authorized by the Privacy Act. *See generally* 5 U.S.C. 552a(b).

Accordingly, the Commission seeks public comment on the proposed system of records as described above, including comment on which methods of collecting the do-not-call data from individuals would be most convenient, reliable, and appropriate, including the potential costs of such methods for the government, telemarketers, and the public; means for verifying the identity or telephone number of the individual who wishes to place that telephone number on the registry; the length of time that such records should be retained before they are deleted; suitable alternatives for providing written acknowledgments of requests to access system records; how much information is necessary or appropriate to maintain in the system; the "routine uses" proposed for these records; and any other issues raised by the proposed system.

Pursuant to 5 U.S.C. 552a(r), the Commission is providing notice of this proposal to the appropriate committees of the House of Representatives and the Senate, and to the Office of Management and Budget.

FTC–IV–3

SYSTEM NAME:

DO-NOT-CALL REGISTRY SYSTEM—FTC (FTC–IV–3).

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. System records may be maintained, in whole or part, off-site by contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who notify the Commission that they do not wish to receive telemarketing calls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers of individuals who do not wish to receive telemarketing calls; the system may also include the date and/or time that the telephone number was placed on or removed from the registry, the individual's telemarketing preferences, or other information that the individual may be asked to provide voluntarily.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. 6101–6108.

PURPOSE(S):

To maintain records of the telephone numbers of individuals who do not wish to receive telemarketing calls; to disclose such records to telemarketers and their agents in order for them to reconcile their do-not-call lists with the registry and comply with the do-not-call provisions of the Commission's Telemarketing Sales Rule, 16 CFR Part 310; to enable the Commission to determine whether a telemarketer is complying with the Rule; to provide statistical data that may lead to or be incorporated into law enforcement investigations and litigation; or for other law enforcement, regulatory or informational purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed as permitted by 5 U.S.C. 552a(b), and, as authorized by 5 U.S.C. 552a(b)(3), in accordance with the routine uses announced by the Commission in Appendix I of its system notice applicable to all other agency Privacy Act systems of records (57 FR 45678). Additional routine uses for records in this system are as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use published for this system:

a. Records may be made available or referred on an automatic or other basis to telemarketers and their agents for the purpose of determining or verifying that an individual does not wish to receive telemarketing calls;

b. Records may be made available or referred on an automatic or other basis to other federal, state, or local government authorities for regulatory, compliance, or law enforcement purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer database maintained on magnetic disks and tape, or other electronic systems determined by the Commission in consultation with staff or contractors.

RETRIEVABILITY:

Indexed by area code and phone number of individuals who have informed the Commission that they do not wish to receive telemarketing calls. May also be retrieved by other data, if any, compiled or otherwise maintained with the record.

SAFEGUARDS:

Access to computerized records by electronic security precautions. Access generally restricted to those agency personnel and contractors whose responsibilities require access, or to approved telemarketers or their agents.

RETENTION AND DISPOSAL:

Automated information retained indefinitely, until deleted pursuant to request by the subject individual, or deleted automatically after certain period of time, to be determined by the Commission.

SYSTEM MANAGER AND ADDRESS:

Do-Not-Call Registry Program Manager, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

NOTIFICATION PROCEDURE:

To obtain notification of whether the system contains a record pertaining to that individual (i.e., the individual's telephone number), individuals may be required to use a dial-in registry or other system that will enable the identification and verification of their telephone numbers. Individuals filing written requests pursuant to 16 CFR 4.13 will be acknowledged and directed to use this system.

RECORD ACCESS PROCEDURES:

See notification procedures above.

CONTESTING RECORD PROCEDURES:

See notification procedures above. Where an individual believes the system has erroneously recorded or omitted information that is collected and maintained by the system, the individual will be afforded the opportunity to register, change, or delete that information after the automated system identifies and verifies the telephone number from which the individual is calling.

RECORD SOURCE CATEGORIES:

Individuals who inform the Commission through the procedures established by the Commission that they do not wish to receive telemarketing calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–4613 Filed 2–26–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1237]

Determination of Regulatory Review Period for Purposes of Patent Extension; RELENZA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for RELENZA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product RELENZA (zanamivir). RELENZA is indicated for the treatment of uncomplicated acute illness due to influenza virus in adults and adolescents twelve years and older who have been symptomatic for no more than two days. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RELENZA (U.S. Patent No. 5,360,817) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of RELENZA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RELENZA is 1,800 days. Of this time, 1,527 days occurred during the testing phase of the regulatory review period, while 273 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 23, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 23, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 27, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for RELENZA (NDA 21–036) was initially submitted on October 27, 1998.

3. *The date the application was approved*: July 26, 1999. FDA has verified the applicant's claim that NDA 21–036 was approved on July 26, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,001 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by April 29, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 26, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–4596 Filed 2–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds HRSA Competitive Grants Notice: Cancellation for the Public Health Training Centers Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Cancellation of notice of availability of funds.

SUMMARY: This notice rescinds the Notice of Availability of Funds for the Public Health Training Centers Grant Program (93.249) published on Tuesday, January 29, 2002 (67 FR 4263). That notice announced the availability of funds for fiscal year (FY) 2002 competitive grant programs that were not included in the *HRSA Preview*. Based on FY 2002 funding, there are

insufficient funds available for new public health training centers projects.

FOR FURTHER INFORMATION CONTACT: Mark Wheeler, Grants Management, Bureau of Health Professions, Parklawn Building, Room 8c–26, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–6880 (*mwheeler@hrsa.gov*).

Dated: February 20, 2002.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 02–4597 Filed 2–26–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2002.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: April 15, 2002; 9:00 a.m.–5:00 p.m., April 16, 2002; 8:30 a.m.–3:00 p.m.

Place: Georgetown Latham Hotel, 3000 M Street, NW., Washington, DC 20007, (202) 726–5000.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program.

Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ms. Kerry P. Nesseler, HRSA, Maternal and Child Health Bureau, telephone: (301) 443–2170.

Agenda items are subject to change as priorities are further determined.

Dated: February 21, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–4598 Filed 2–26–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions	
BEP Services, LP Louisville, KY	08/15/2001
Filkins, Ann Weaver Pulteney, NY	01/20/2002
Jimenez-Casso, Jose Bayamon, PR	01/20/2002
Johnson, Eddie Dillon, SC	01/20/2002
Katz, Ronald New York, NY	01/20/2002
Lopez-Morales, Angel Bayamon, PR	01/20/2002
Richey, Donna Marie E Wenatchee, WA	01/20/2002
Roche, Fernando M Miami, FL	01/20/2002
Temple, Terry Lee Scottsdale, AZ	01/20/2002
Thomas, Cynthia Wichita, KS	01/20/2002
Tirado-Rivera, Hernon Bayamon, PR	01/20/2002
Felony Conviction for Health Care	
Dilli, Darlene Marie McPherson, KS	0120/02
Felony Control Substance Conviction	
Gimenez, Alonzo R Ripon, WI	01/20/2002
Goldstein, Marshall Upper St Clair, PA	01/20/2002
Lee, Wendy Louise Waite Greeley, CO	01/20/2002
Leone, Michael A Indianapolis, IN	01/20/2002
Teal, Robin Louise Cary, NC	01/20/2002
Patient Abuse/Neglect Convictions	
Benjamin, Kimberly Isanti, MN	01/20/2002
Coviello, Peter Raymond Whitney, TX	01/20/2002
Euerle, Nancy Newport, MN	01/20/2002
Finch, Brenda Ona San Antonio, TX	01/20/2002
Lewis, Shentelle Lanelle Jeanerette, LA	01/20/2002
Miguel, Alejandra C Lihue, HI	01/20/2002
Nelson, Konrad P Orem, UT	01/20/2002
Perdue, Elizabeth Lawton, OK	01/20/2002
Pilant, Jesse Wayne Tucson, AZ	01/20/2002
Rogers, Harold Clifton Elk City, OK	01/20/2002
Smith, Kevin Bernard Laurel, MS	01/20/2002
White, Tonya Y Tulsa, OK	01/20/2002
License Revocation/Suspension/ Surrendered	
Alvarez, Mark T Cranston, RI	01/20/2002
Barcelos, Susana M Chino, CA	01/20/2002
Bennett, Freeman Thomas Jackson, MS	01/20/2001
Blaylock, Tina Folies Indianapolis, IN	01/20/2002
Bradshaw, Benjamin F Jerome, ID	01/20/2002
Brosemer, Dwaine G Poway, CA	01/20/2002
Brown, Tracey Lee Tulsa, OK	01/20/2002
Bullington, Tom Wilson Jr Wichita Falls, TX	01/20/2002
Bullock, Johnny Ray Jr Columbia, MS	01/20/2002
Bustos, Rodolfo Calara	01/20/2002

Subject, city, state	Effective date
Lakewood, CA	
Byrd, Shirley B Smith Midlothian, TX	01/20/2002
Byrum, Rebecca G Russellville, TN	01/20/2002
Case, Camille Mary New Hope, MN	01/20/2002
Clayton, Mary Diane Santa Fe, TX	01/20/2002
Cooke, Peggy J Boerne, TX	01/20/2002
Copanas, Barbara T N Syracuse, NY	01/20/2002
Corbett, Bannon Louis Fayetteville, NC	01/20/2002
Craig, Velina Faye Amarillo, TX	01/20/2002
Dancer, Pamela Renee Lavernia, TX	01/20/2002
Daughton, Margaret Irene Mound, MN	01/20/2002
De Sibila, Estrella Meredos Miami, FI	01/20/2002
Debiasio, Teresa C Johnston, RI	01/20/2002
Delfin, Jose G Chicago, IL	01/20/2002
Dempsey, Lori Louise Urbana, IL	01/20/2002
Elliott, John San Angelo, TX	01/20/2002
Ethridge, Gary Brent Lubbock, TX	01/20/2002
Evans, Gregory Ebon Effingham, IL	01/20/2002
Farina, Joel A Tucson, AZ	01/20/2002
Fischer, Joseph Bernard Zimmerman, MN	01/20/2002
Flint, Mary A Houston, TX	01/20/2002
Forti, Paul J E Hanover, NJ	01/20/2002
Fowler, Franklin L Peoria, AZ	01/20/2002
George, Barbara Gene Houston, TX	01/20/2002
Gilbert, Lori Nell Round Rock, TX	01/20/2002
Gilbert, Greg Amarillo, TX	01/20/2002
Gouin, Michelle M Sedona, AZ	01/20/2002
Gray, Ava Gautier, MS	01/20/2002
Hakola, Lee Gordon Germantown, TN	01/20/2002
Hamilton, Peder Hudson Campbell, CA	01/20/2002
Harris, Okera Kandie San Diego, CA	01/20/2002
Hart, Linda Lee Cottage Grove, OR	01/20/2002
Harvey, Paula Sue Romayor, TX	01/20/2002
Hernandez, Susie Glendale, AZ	01/20/2002
Hess, Karla Jean Rochester, MN	01/20/2002
Hodges, Crystal Dawn Wilson, OK	01/20/2002
Holder, Donna Lynn Batesville, AR	01/20/2002
Howell, James Benwell Jr Bryan, TX	01/20/2002
Johnson, Clifton Walter Superior, WI	01/20/2002
Johnson, Joe Allen Jr Brandon, MS	01/20/2002
Johnson, G Nicholas Sausalito, CA	01/20/2002
Jones, Katie Mae Jackson, MS	01/20/2002
Kaufman, Donna Oxford, MS	01/20/2002
Kennard, Carol J Kingsport, TN	01/20/2002
Kirby, Janet D Conroe, TX	01/20/2002
Kowalik, Vance San Antonio, TX	01/20/2002
Krupke, Nancy Lee Willmar, MN	01/20/2002
Kuehn, Sharon R N Richland Hills, TX	01/20/2002
Lara, Sandra C Houston, TX	01/20/2002
Leith, Gwendolyn Faye Fairfield, IL	01/20/2002
Lewis, Marshall G Natchez, MS	01/20/2002
Little, Donna Sue Port Lavaca, TX	01/20/2002
Long, Deborah Lynn Framingham, MA	01/20/2002
Lopez, Deborah Meridian, MS	01/20/2002
Lott, Cynthia Rose Fairfield, CA	01/20/2002
Macdougall, Catherine T Brighton, MA	01/20/2002
Martin, Stephanie Gail Little Rock, AR	01/20/2002
Masden, Beth A Henson Richmond, KY	01/20/2002
McCreary, William F Astor, FL	01/20/2002
McGowan, Gail T Holliston, MA	01/20/2002
MCrae, Teresa Dekalb, MS	01/20/2002
Melnyk, Lisa Marie Winnipeg Canada, CN	01/20/2002
Mitchell, Vanzie L Abbeville, AL	01/20/2002
Morrow, Hubert Wesley III Sherman, TX	01/20/2002
Myatt, Donna Marie Hull, MA	01/20/2002
Nelson, Connie Yvonne Calera, AL	01/20/2002
Noel, Raymond V Glendale, AZ	01/20/2002
Noll, Cindy Houston, TX	01/20/2002
Pendley, Virginia Marie Miami, OK	01/20/2002
Rehmatullah, Tahir M East Haven, CT	01/20/2002
Reinhard, Amy Jean Fountain, CO	01/20/2002
Rice, Timothy Ray Maxie, VA	01/20/2002
Riggs, Rhonda Lynn Denison, TX	01/20/2002
Robson, Laura Ellen Aliso Viejo, CA	01/20/2002
Rohner, Sue E Greenfield, IA	01/20/2002
Samuels, David Lee Louisville, KY	01/20/2002
Shelton, Kimberly Wesson, MS	01/20/2002
Shipp, Lara San Angelo, TX	01/20/2002
Song, Kee Woon Denver, CO	01/20/2002
Southerland, Clara Ann Jackson, MS	01/20/2002
Stewart, Daniel Jackson, MS	01/20/2002
Stratford, William Brooklyn, NY	01/20/2002
Thibodeaux, Laura Gulfport, MS	01/20/2002
Watson, Luann H Fordyce, AR	01/20/2002
Watson, Roberta Aurora Amina Minneapolis, MN	01/20/2002
Wernette, Michael D Chicago, IL	01/20/2002
Williams, Golden M Stanfield, AZ	01/20/2002
Williams, Sencelra Brown Warrenton, NC	01/20/2002
Wolfenbarger, Lisa D Knoxville, TN	01/20/2002
Zadeh, Ali Shamaei Paintsville, KY	01/20/2002
Ziegler, Ann Marie Milan, IL	01/20/2002

Federal/State Exclusion/Suspension

Hwang, Jia Hsing Chicago, IL	01/20/2002
Mathew, Aelamplaseril Quincy, IL	01/20/2002
Ponglorpisita, Suchat Chicago, IL	01/20/2002

Fraud/Kickbacks

Mitruka, Brij M New Orleans, LA	09/18/2001

Owned/Controlled by Convicted Entities

Anthony Perso, D C Massapequa, NY	01/20/2002
Bittenberger Chiropractic Wilkes Barre, PA	01/20/2001
Christina Sirlin Yonkers, NY	01/20/2002
CPC Pharmacy, Inc Bronx, NY	01/20/2002
Diversified Pain Center Wilkes Barre, PA	01/20/2002
Downtown Chiropractic El Centro, CA	01/20/2002
Family Chiropractic of Newton Langhorne, PA	01/20/2002
Healing Arts Center Houston, TX	01/20/2002

Default on Heal Loan

Acevedo-Reyes, Angel Luis C San Juan, PR	01/20/2002
Beckford, Audrey Leonie E Orange, NJ	01/20/2002
Clay, Mark David	12/06/2001

Subject, city, state	Effective date
Birmingham, AL	
Daniel, Albert M III	01/20/2002
Grapevine, TX	
Dominic, Anthony J	01/20/2002
Manasquan, NJ	
Geisler, Marlene G	01/20/2002
Paonia, CO	
Grobes, Rodney T	01/20/2002
Bear, DE	
Hunt, Richard Dean	01/20/2002
Pasadena, CA	
Kandakloo, Farhad Elliot	01/20/2002
Hayward, CA	
Nunoo, Godfrey Okine	01/20/2002
Oakland, CA	
Ojo, Odion Emmanuel	01/20/2002
Houston, TX	
Orwig, Stephen R	01/20/2002
Irving, TX	
Powers, Thomas P	01/20/2002
Pawhuska, OK	
Reynolds, Ferman Ray Jr	01/20/2002
Dallas, TX	
Rivera, Nelson E	12/05/2001
Hartford, CT	
Rogers, Robert	01/20/2002
Aptos, CA	
Rogers, Terri Lynn	01/20/2002
Los Angeles, CA	
Rushing, Gary W	01/20/2002
Matawan, NJ	
Schluter, Lyle C A	01/20/2002
Sonoma, CA	
Sirois, Bernard D Jr	01/20/2002
Salem, MO	
Small, Deborah Elizabeth	01/20/2001
Colton, CA	
Strus, Deborah A	01/20/2002
San Antonio, TX	
Vengco, Jennifer	01/20/2002
W Covina, CA	
Washington, Patricia A	01/20/2002
Trabuco Canyon, CA	
Wentworth, Robert D	01/20/2002
Mount Laurel, NJ	
Willey, Patricia Anne	01/20/2002
Dos Palos, CA	

Dated: December 31, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–4612 Filed 2–26–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–06]

Notice of Submission of Proposed Information Collection to OMB; Demolition/Disposition Application and Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0075) should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed uses; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (1) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Demolition/Disposition Application and Reporting.

OMB Approval Number: 2577–0075.

Form Numbers: HUD–52860.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) may request approval for demolition or disposition of public housing property. Once approved, the PHAs report when the action is complete or if there are any delays.

Respondents: State, Local or Tribal Government.

Frequency of Submission: As PHAs develop.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
120		1		17		2,040

Total Estimated Burden Hours: 2,040.
Status: Extension or a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 15, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–4561 Filed 2–26–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Comprehensive Conservation Plans and Environmental Assessments for: Shiawassee National Wildlife Refuge, Saginaw, Michigan; Michigan Wetland Management District, East Lansing, Michigan; Wyandotte National Wildlife Refuge, Wyandotte and Ecorse, Michigan; and Rydell National Wildlife Refuge, Erskine, Minnesota

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published final Comprehensive Conservation Plans and Environmental Assessments for Wyandotte National Wildlife Refuge (NWR); Rydell NWR; and Shiawassee NWR, which includes the Michigan Wetland Management District. These plans describe how the Service intends to manage the three refuges and the wetland management district of the next 15 years.

ADDRESSES: A plan or summary may be obtained by writing to the Refuge or submitting a request electronically. For a copy of the Rydell NWR Comprehensive Conservation Plan, address requests to: Rydell National Wildlife Refuge, Route 3, Box 105, Erskine, Minnesota 56535, or direct e-mail to *r3planning@fws.gov*. The Shiawassee NWR and Wyandotte NWR comprehensive conservation plans are available by writing to: Shiawassee National Wildlife Refuge, 6975 Mower Road, Saginaw, Michigan 48601, or submitting a request electronically to *fw3shiawassee@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information on either the Shiawassee NWR or Wyandotte NWR comprehensive conservation plans, contact Doug Spencer, Refuge Manager, at the address above or call the Refuge at 989/777–5930. For additional information related to the Rydell NWR plan, contact Rick Julian, Refuge Manager, at the address listed above or call the Refuge at 218/687–2229. For additional information related to the Michigan Wetland Management District, contact Jim Hudgins, Project Leader, U.S. Fish & Wildlife Service, 2651 Coolidge Road, East Lansing, Michigan 48823, or call 517/351–4230.

SUPPLEMENTARY INFORMATION: In 1997, Congress mandated that the Service prepare a comprehensive conservation plan for each refuge within the National Wildlife Refuge System. Comprehensive conservation plans guide management decisions over the course of 15 years. They identify refuge goals and objectives as well as strategies for achieving those goals and objectives. Plans will be reviewed and updated at least every 15 years. Public input is the foundation of the planning process, and there were many opportunities for public involvement as plans were developed for Shiawassee, Wyandotte, and Rydell National Wildlife Refuges. The plans provide other agencies and the public with a clear understanding of the desired conditions of each Refuge and how the Service will implement management strategies.

Dated: February 21, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 02–4586 Filed 2–26–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–1430–ES, NMNM 107508, NMNM 103827]

Notice of Realty Action; Recreation and Public Purposes R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Taos County, New Mexico have been examined and found suitable for classification for lease or conveyance to Taos County, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Taos County proposes to use the lands for waste transfer sites.

New Mexico Principal Meridian

T. 24 N., R. 11 E.,
Sec. 33, within NENE.
Containing approximately 2.5 acres.
T. 24 N., R. 9 E.,
Sec. 8: within SENE.
Containing approximately 2.5 acres.

The lands are not needed for Federal Purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/conveyance, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Those rights for a road right-of-way granted to New Mexico State Highway Department by Permit No. NM–027705.
5. Those rights for a road right-of-way granted to New Mexico State Highway Department by Permit No. NMSF–0074775.
6. Those rights for a buried telephone line granted to Valor Telecom of NM LLC by Permit No. NM–068575.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Taos Resource Area, 226 Cruz Alta, Taos, NM 87571.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Office Manager, BLM Taos Office, 226 Cruz Alta Road, Taos, New Mexico 87571.

Classification Comments

Interested parties may submit comments involving the suitability of the land for waste transfer sites for Taos County. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use

proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: January 29, 2002.

Sam DesGeorges,

Field Office Manager.

[FR Doc. 02–4662 Filed 2–26–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ] ES–51423, Group 99, Michigan]

Notice of Filing of Plat of Survey; Michigan

The plat of the dependent resurvey of a portion of the south (4th correction line) and east boundaries, the west and north boundaries, and a portion of the subdivisional lines, Township 41 North, Range 19 West, and a portion of the south and west boundaries, Township 42 North, Range 18 West, and a portion of the south boundary, Township 42 North, Range 20 West, Michigan Meridian, Michigan, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 2, 2002.

The survey was made at the request of the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 2, 2002.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 31, 2002.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 02–4665 Filed 2–26–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31937]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw approximately 364 acres of National Forest System land to protect the Clear Creek Ruins Archeological District. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before May 28, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest

Gila and Salt River Meridian

T. 13 N., R. 5 E.,
Sec. 11, lot 4, lot 5, lots 13 to 18, inclusive, and W½W½NE¼.

The area described contains approximately 364 acres in Yavapai County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: January 17, 2002.

Steve J. Gobat,

Acting Deputy State Director, Resources Division.

[FR Doc. 02–4661 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31892]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 48.59 acres of National Forest System land to protect the archeological and historical values of the Turkey Hills Pueblo Archeological Site. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before May 28, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest

Gila and Salt River Meridian

T. 22 N., R. 8 E.,
Sec. 35, S½SW¼NE¼NW¼,
S½SE¼NE¼NW¼,
SE¼SE¼NW¼NW¼,
E½NE¼SW¼NW¼,

N½NE¼SE¼SW¼NW¼,
N½S½NE¼SE¼SW¼NW¼,
N½SE¼NW¼,
N½N½SW¼SE¼NW¼,
N½S½N½SW¼SE¼NW¼,
SE¼SW¼NE¼SW¼SE¼NW¼,
S½SE¼NE¼SW¼SE¼NW¼, and
N½SE¼SE¼NW¼.

The area described contains 48.59 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: November 27, 2001.

Daniel H. Nowell,

Acting Deputy State Director, Resources Division.

[FR Doc. 02–4663 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31897]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw approximately 4,785 acres of National Forest System land and approximately 150 acres of non-Federal lands, if acquired, to protect the archeological and historical values of the Nuvakwewtaga Archeological District. This notice segregates the National Forest System land for up to 2 years from location and entry under the United States mining laws. The non-Federal lands would also be segregated from location and entry under the United States mining laws if acquired by the United States during the 2-year period. The National Forest System land will remain open to all other uses which may by law be made of National Forest System lands.

DATES: Comments should be received on or before May 28, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest

Gila and Salt River Meridian

National Forest System Lands

T. 16 N., R., 11 E.
Sec. 1;
Sec. 2;
Sec. 11, E½;
Sec. 12;
Sec. 13;
Sec. 14, E½;
Sec. 24, N½.
T. 16 N., R., 12 E.
Sec. 7, lots 7 to 12, inclusive, and SE¼;
Sec. 18, E½NE¼NE¼, W½W½NE¼, SE¼NE¼, lots 1 to 11, inclusive, lot 12, excluding patented land, and E½SE¼;
Sec. 19.

The area described contains approximately 4,785 acres in Coconino County.

Non-Federal Lands

T. 16 N., R. 12 E.,
Sec. 18, W½NE¼NE¼, E½W½NE¼, W½SE¼, and lot 12, patented portion only.

The area described contains approximately 150 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: November 27, 2001.

Daniel H. Nowell,

Acting Deputy State Director, Resources Division.

[FR Doc. 02–4664 Filed 2–26–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Unassociated Funerary Objects in the Possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ, that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the

museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 74 cultural items are whole and reconstructable ceramic vessels; sherds; chipped stone artifacts and debitage; ground stone; worked and unworked nonhuman bone; worked and unworked shell; and archeomagnetic, pollen, and flotation samples that were collected during legally authorized data recovery efforts by the Phoenix Area Office and are now curated at the Central Arizona Project Repository.

Between 1980 and 1981, legally authorized data recovery efforts were undertaken by the Arizona State Museum for the Bureau of Reclamation at the Las Fosas site, AZ U:15:19(ASM), in the Gila River Valley east of Florence, Pinal County, AZ. The 13 unassociated funerary objects that were recovered include 6 bowls (reconstructable from sherds), 1 projectile point, 1 flake tool, and 5 flotation samples. On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1980 and 1981, legally authorized data recovery efforts were undertaken by the Arizona State Museum for the Bureau of Reclamation at Frogtown, AZ U:15:61(ASM), west of Florence Junction, Pinal County, AZ. The one unassociated funerary object is a carved piece of shell. On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz and Sacaton Phases (A.D. 750-1150) of the Preclassic period.

Between 1980 and 1981, legally authorized data recovery efforts were undertaken by the Arizona State Museum for the Bureau of Reclamation at the Dustbowl site, AZ U:15:76(ASM), on the Gila River northeast of Florence, Pinal County, AZ. The two unassociated funerary objects are one sherd disk and one bag of sherds. On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz Phase (A.D. 750-900) of the Preclassic period.

Between 1980 and 1981, legally authorized data recovery efforts were undertaken by the Arizona State Museum for the Bureau of Reclamation at the Saguaro site, AZ U:15:77(ASM), on the Gila River northeast of Florence, Pinal County, AZ. The eight unassociated funerary objects are three stone cores, two hammerstones, two manos, and one bag of sherds. On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Preclassic period (A.D. 700-1150).

Between 1986 and 1987, legally authorized data recovery efforts were undertaken by Archaeological Consulting Services for the Bureau of Reclamation at site AZ T:3:10(ASM), near the Agua Fria and New River Valleys north of Phoenix, Maricopa County, AZ. The three unassociated funerary objects are one partial ceramic scoop and two flotation and pollen samples. On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic period (A.D. 800-1150).

In 1985, legally authorized data recovery efforts were undertaken by the Museum of Northern Arizona for the Bureau of Reclamation at the Brady Wash site, NA18003 (MNA), at the base of the Picacho Mountains in Pinal County, AZ. The one unassociated funerary object is a Sacaton Red/Buff ceramic censer. On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1985, Arizona State University undertook legally authorized data recovery for the Bureau of Reclamation at the Muchas Casas site, AZ AA:12:2(ASU), north of Tucson, Pima County, AZ. The nine unassociated funerary objects are one miniature ceramic bowl, one reconstructed miniature ceramic jar, four bags of sherds, one faunal bone, and two mineral samples. On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1982 and 1983, Arizona State Museum undertook a legally authorized survey for the Bureau of Reclamation at site AZ AA:12:331(ASM), at the base of the Picacho Mountains, Pima County, AZ. The one unassociated funerary object is a bag of ochre that was recovered in a soil matrix from a possible cremation exposed on the surface. On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1985 and 1986, legally authorized data recovery efforts were undertaken by Northland Research for the Bureau of Reclamation at the Hind site, AZ AA:1:62(ASM), in the lower Santa Cruz Valley, Pinal County, AZ, in an area to be impacted by the Santa Rosa Canal. The two unassociated funerary objects are two large Gila Plain bowl sherds. On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site is dated to the Late Pioneer through Early Sedentary Phases (A.D. 700-950) of the Preclassic period.

Between 1985 and 1986, legally authorized data recovery efforts were undertaken by Northland Research for the Bureau of Reclamation at Shelltown, AZ AA:1:66(ASM), located in the lower Santa Cruz Valley, Pinal County, AZ, in an area to be impacted by the Santa Rosa Canal. The 34 unassociated funerary objects are 1 partially reconstructable Snaketown Red/Buff bowl; 1 partial Gila Butte Red/Buff bowl; 1 partial Red/Buff jar; 14 bags of sherds; 1 worked sherd; 4 bags of chipped stone; 1 bag of unworked shell; 1 bag of unworked faunal bone; and 10 flotation, pollen, and radiocarbon samples. On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Gila Butte through Sacaton Phases (A.D. 600-1150) of the Preclassic period.

Evidence provided by anthropological, archeological, biological, geographical, historical, kinship, linguistics, and oral tradition sources was considered in determining the cultural affiliation of these cultural items. Bureau of Reclamation officials have determined that, pursuant to 43 CFR 10.2(e), the preponderance of the evidence suggests that the historic O'odham groups (Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona, including the San Xavier District) have a strong cultural affiliation with the prehistoric Hohokam who occupied the middle Gila Valley and surrounding areas. Great similarities in settlement patterns, economic systems, architecture, and material culture point to a close relationship between the Hohokam and the O'odham groups. The O'odham were well established along the rivers and in the deserts when the Spanish first arrived in northern Sonora and southern Arizona.

One of the two Pima moieties claims descent from the Hohokam, while the other moiety is said to have descended from the "emergers," those who overthrew the Hohokam leaders. Although the O'odham belong to the same linguistic group (Piman) as communities in what is now northern Mexico, shared vocabulary and syntax with Yuman language groups along the Colorado River suggest a long-term history of interaction that stretches back into prehistoric times in what is now southern Arizona.

Evidence also shows the interaction of ancestral Zuni and Hopi groups with the prehistoric Hohokam. This interaction is indicated by the presence of trade items, particularly ceramics. Such interaction continued into protohistoric and early historic times. In addition to trade, Hopi and Zuni migration traditions indicate that clans originating from areas south of the Colorado Plateau joined the plateau communities late in prehistoric times. These groups contributed ceremonies, societies, and iconography to the plateau groups. Both O'odham and Western Pueblo oral traditions indicate that some Hohokam groups may have left the Salt-Gila River Basin after disastrous floods and social upheaval. These groups traveled north and east, possibly to be assimilated by the Hopi and Zuni. These ties are reflected in some of the traditional ceremonies maintained as part of the annual ceremonial cycle.

Evidence suggests that the Hopi and Zuni are also culturally affiliated with the Hohokam. Their ancestors had trade relationships and other likely interactions with the Hohokam, similar to those found between groups in the early historic period. Hopi and Zuni oral traditions indicate that segments of the prehistoric Hohokam population migrated to the areas occupied by the Hopi and Zuni and were assimilated into the resident populations.

Based on the above-mentioned information, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), the 74 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony, and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bureau of Reclamation also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'Odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact in writing Jon Czaplicki or Bruce Ellis, Bureau of Reclamation, Phoenix Area Office, P.O. Box 81169, Phoenix, AZ 85069-1169, telephone (602) 216-3862, before March 29, 2002. Repatriation of these unassociated funerary objects to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'Odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: January 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–4581 Filed 2–26–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by Bureau of Reclamation professional staff in consultation with representatives of the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos

Reservation, Arizona; Tohono O'Odham Nation; Tohono O'Odham Nation of Arizona, San Xavier District; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Cocopah Tribe of Arizona indicated that the Central Arizona Project region is outside of their claims area.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing one individual were recovered from site AZ AA:3:21(ASM), south of Florence, Pinal County, AZ. No known individual was identified. The 27 associated funerary objects are 7 bags of sherds; 15 metate and mano fragments; 2 bags of chipped stone; 2 bags of unworked shell fragments; and 1 macrobotanical sample.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing 20 individuals were recovered from the Siphon Draw site, AZ U:10:6(ASM), south of Apache Junction, Pinal County, AZ. No known individuals were identified. The 141 associated funerary objects are 17 ceramic vessels (5 miniature bowls, 1 miniature jar, 1 plate, 9 bowls, and 1 jar), 8 human clay figurines; 34 bags of sherds; 1 fragmented stone bowl; 1 stone palette; 2 bags of chipped stone; 2 bags of worked shell (including 1 shell bracelet fragment and 9 worked shell fragments); 5 bags of unworked shell fragments; 11 bags of worked faunal bone (including approximately 11 fragmented bone awl/hairpins); 14 bags of unworked faunal bone; and 46 flotation, pollen, macrobotanical, and raw material samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz through Sacaton Phases (A.D. 700-1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing one individual were recovered from the Smiley's Well site, AZ U:14:73(ASM), along Queen Creek, west of Florence Junction, Pinal County, AZ. No known individual was identified. The two associated funerary objects are one bag of unworked faunal bone and one soil sample.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the late Sedentary Phase (circa A.D. 1050-1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing 31 individuals were recovered from the Las Fosas site, AZ U:15:19(ASM), in the Gila River valley, east of Florence, Pinal County, AZ. No known individuals were identified. The 290 associated funerary objects are 58 whole, reconstructed, or reconstructable ceramic vessels (including 33 bowls, 16 jars, 5 scoops, 1 effigy canteen, and 3 unidentifiable vessels); 85 bags of sherds; 1 arrowshaft straightener; 1 stone anvil; 1 turquoise pendant; 1 worked turquoise fragment; 5 ground stone fragments; 2 perforated stone disks; 1 steatite rod; 1 possible pestle; 2 projectile points; 46 bags of chipped stone; 2 bags of worked shell (including 1 shell disk bead and 1 shell bracelet fragment); 2 bags of worked faunal bone (including 1 antler flaking tool and 1 partial bone needle); 13 bags of unworked faunal bone; and 69 flotation, pollen, macrobotanical, and raw material samples.

On the basis of archeological context, chronometric, architectural, ceramic and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing three individuals were recovered from the Jones Ruin site, AZ U:15:48(ASM), along the Gila River, northwest of Florence, Pinal County, AZ. No known individuals were identified. The four associated funerary objects are two bags of sherds, one bag of chipped stone, and one pollen sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Late Sacaton through Early Soho Phases (A.D. 1100-1200) of the transitional Preclassic-Classic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing four individuals were recovered from the El Polvoron site, AZ U:15:59(ASM), near Queen Creek, west of Florence Junction, Pinal County, AZ. No known individuals were identified. The 26 associated funerary objects are 1 ceramic vessel, 11 bags of sherds, 2 bags of chipped stone, 1 bag of worked faunal bone (including 1 bone hairpin), 3 bags of unworked faunal bone, and 8 flotation and macrobotanical samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing 25 individuals were recovered from Frogtown, AZ U:15:61(ASM), west of Florence Junction, Pinal County, AZ. No known individuals were identified. The 120 associated funerary objects are 13 whole, reconstructed, and reconstructable ceramic vessels (8 bowls, 2 jars, 1 plate, 1 miniature jar, and 1 unidentifiable vessel), 26 bags of sherds; 2 steatite disk beads; 1 partial stone pendant; 1 stone palette; 4 projectile points; 5 bags of chipped stone; 5 bags of worked shell (including 1 whole shell pendant, 1 *Glycymeris* shell bracelet, 4 *Olivella* whole shell beads, and 3 pieces of worked shell); 2 bags of unworked shell fragments; 7 bags of worked faunal bone (including 3 bone awl/hairpins and 4 bags worked bone fragments); 11 bags unworked faunal bone; and 43 flotation, pollen, and macrobotanical samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz and Sacaton Phases (A.D. 750-1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing one individual were recovered from Rancho Sin Vacas, AZ U:15:62(ASM), west of Florence Junction, Pinal County, AZ. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Sedentary Phase (A.D. 950-1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing five individuals were recovered from the Dustbowl site, AZ U:15:76(ASM), on the Gila River, northeast of Florence, Pinal County, AZ. No known individuals were identified. The 59 associated funerary objects are 1 ceramic bowl, 2 sherd disks, 2 worked sherds, 25 bags of sherds, 1 pecked sandstone slab, 1 projectile point, 20 bags of lithics, 1 shell pendant, 2 bone hairpins, 2 bags of unworked faunal bone, and 2 macrobotanical and raw material samples.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz Phase (A.D. 750-900) of the Preclassic period; a Soho Phase (A.D. 1150-1300) occupation of the Classic period is also evident.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing two individuals were recovered from the Saguaro site, AZ U:15:77(ASM), on the Gila River, northeast of Florence, Pinal County, AZ. No known individuals were identified. The 28 associated funerary objects are 1 partially reconstructable ceramic jar, 15 bags of sherds, 4 bags of chipped stone, 2 bags of unworked terrestrial snail shells, 2 bags of unworked faunal bone, and 4 radiocarbon and flotation samples.

On the basis of archeological context, architectural, ceramic and other types of artifactual evidence, the site represents a Hohokam occupation of the Preclassic period (A.D. 700-1150); a Soho Phase (A.D. 1150-1300) occupation of the Classic period is also evident.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing four individuals were recovered from the Junkyard site, AZ U:15:83(ASM), east of Florence, Pinal County, AZ. No known individuals were identified. The 14 associated funerary objects are 1 partial ceramic bowl, 1 reconstructable jar, 7 bags of sherds, 4 bags of chipped stone, and 1 flotation sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a lengthy Hohokam occupation from the late Colonial through early Classic periods (circa A.D. 850-1300); the human remains belong to the early Classic period (A.D. 1150-1300).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of six individuals were recovered from site AZ U:15:85(ASM), in Pinal County, AZ. No known individuals were identified. The 10 associated funerary objects are 3 reconstructed ceramic jars, 1 partially reconstructed bowl, 1 partial perforated sherd disk, and 5 bags of sherds.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing one individual were recovered from the Gopherette site, AZ U:15:87(ASM), east of Florence, Pinal County, AZ. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the early Classic period (A.D. 1150-1300).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, a partial human tooth representing one individual was recovered from Casas Pequeñas, AZ U:15:97(ASM), west of Florence Junction, Pinal County, AZ. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Colonial Phase (circa A.D. 750-950) of the Preclassic period.

Between 1986 and 1987, during legally authorized data recovery efforts undertaken by Archeological Consulting Services, Inc. for the Bureau of Reclamation, human remains representing three individuals were recovered from site AZ T:3:10(ASM), near the Agua Fria and New River Valleys north of Phoenix, Maricopa County, AZ. No known individuals were identified. The 12 associated funerary objects are 3 bags of sherds, 1 stone palette, 2 bags of chipped stone, 2 bags worked faunal bone (including 1 bone awl point and 1 bone hairpin), 1 bag of unworked faunal bone, and 3 flotation, pollen, and raw material samples.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic period (A.D. 800-1150).

Between 1986 and 1987, during legally authorized data recovery efforts undertaken by Archeological Consulting Services, Inc. for the Bureau of Reclamation, human remains representing one individual were recovered from site AZ T:3:19(ASM), near the Agua Fria and New River Valleys north of Phoenix, Maricopa County, AZ. No known individual was identified. The 25 associated funerary objects are 2 ceramic bowls, 1 ceramic scoop, 9 bags of sherds, 5 bags of chipped stone, 3 bags of unworked faunal bone, and 5 flotation and pollen samples.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic period (A.D. 800-1150).

Between 1986 and 1987, during legally authorized data recovery efforts undertaken by Archeological Consulting Services, Inc. for the Bureau of Reclamation, human remains representing three individuals were recovered from site AZ T:3:20(ASM), near the Agua Fria and New River Valleys north of Phoenix, Maricopa County, AZ. No known individuals were identified. The 17 associated funerary objects are 1 bag of sherds, 1 ground stone axe, 2 trough metates, 1 projectile point, 1 bag of chipped stone, 2 bags of unworked faunal bone, and 9 flotation and pollen samples.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1986 and 1987, during legally authorized data recovery efforts undertaken by Archeological Consulting Services, Inc. for the Bureau of Reclamation, human remains representing a minimum of six individuals were recovered from site AZ T:3:24(ASM), near the Agua Fria and New River Valleys north of Phoenix, Maricopa County, AZ. No known individuals were identified. The 109 associated funerary objects are 6 ceramic bowls; 1 ceramic jar; 1 ceramic scoop; 33 bags of sherds; 12 bags of

chipped stone; 3 bags of worked faunal bone (representing 3 worked turtle carapace fragments); 17 bags of unworked faunal bone; and 36 flotation, pollen, radiocarbon, and raw material samples.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic or Classic period (A.D. 700-1450).

In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing 55 individuals were recovered from the Brady Wash site, NA18003(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 257 associated funerary objects are 29 whole and reconstructable vessels (19 bowls, 6 jars, and 4 scoops); 1 partial perforated sherd disk; 1 figurine fragment; 58 bags of sherds; 1 schist anvil; 1 stone bead; 1 mano fragment; 1 stone lip/nose plug; 2 projectile points; 23 bags of chipped stone; 7 bags of worked shell (including 50 shell disk beads, 78 whole *Olivella* shell beads, 1 *Glycymeris* shell ring, and 1 worked shell fragment); 3 bags of unworked shell fragments; 2 bags of worked faunal bone (including 3 worked fragments); 18 bags of unworked faunal bone; and 109 flotation, pollen, macrobotanical, and raw material samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing eight individuals were recovered from the Picacho Pass site, NA18030(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 32 associated funerary objects are 4 ceramic vessels (2 bowls, 1 jar, and 1 cup); 9 bags of sherds; 1 stone disk bead; 3 projectile points; 5 bags of chipped stone; and 10 flotation and pollen samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic period (A.D. 700-1150).

In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing five individuals were recovered from the McClellan Wash site, NA18031(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 15 associated funerary objects are 5 ceramic vessels (3 bowls and 2 jars), and 10 flotation and pollen samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing one individual were recovered from the Pecan site, NA18037(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Preclassic or Classic period (A.D. 700-1450).

In 1985, during legally authorized data recovery undertaken by Arizona State University for the Bureau of Reclamation, human remains representing a minimum of 68 individuals were recovered from Muchas Casas, AZ AA:12:2(ASU), north of Tucson, Pima County, AZ. No known individuals were identified. The 523 associated funerary objects are 34 whole and reconstructable ceramic vessels (17 jars, 14 bowls, 1 scoop, and 2 unidentifiable vessels); 4 sherd pendants; 3 worked sherds; 166 bags of sherds; 30 stone beads; 4 ground stone artifacts; 1 ground stone palette; 1 stone pendant; 4 ground stone fragments; 61 bags of chipped stone; 15 bags of worked shell (including 5 shell bracelet fragments, 12 shell beads, 1 complete perforated *Glycymeris* shell, 1 shell tinkler, and 2 worked shell fragments); 7 bags of unworked shell fragments; 3 bags of worked faunal bone (including 3 awl/hairpins); 38 bags of unworked faunal bone fragments; and 152 flotation, pollen, charcoal, and macrobotanical samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1985, during legally authorized data recovery undertaken by Arizona State University for the Bureau of Reclamation, human remains representing one individual were recovered from the Rancho Derrio site, AZ AA:12:3(ASU), north of Tucson, Pima County, AZ. No known individual was identified. The two associated funerary objects are one ceramic jar and one flotation sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Between 1983 and 1984, during legally authorized testing by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from the Waterworld site, AZ AA:16:94(ASM), west of Tucson, Pima County, AZ. No known individual was identified. The five associated funerary objects are one reconstructable plainware bowl, one reconstructable plainware jar, and three bags of sherds.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Rillito Phase (A.D. 700-900) of the Preclassic period.

Between 1986 and 1988, during legally authorized data recovery efforts undertaken by the University of Arizona for the Bureau of Reclamation, human remains representing a minimum of 11 individuals were recovered from the Fastimes site, AZ AA:12:384(ASM), west of the Tucson Mountains in Pima County, AZ. No known individuals were identified. The 109 associated funerary objects are 17 ceramic vessels (11 jars, 5 bowls, and 1 partial scoop); 1 worked sherd; 10 bags of sherds; 13 stone beads; 1 stone bowl; 1 ground handstone; 2 projectile points; 1 bag of chipped stone; 23 bags of worked shell (including 150 shell beads and 14 shell bracelet fragments); 1 bag of unworked shell fragments; 3 bags of worked faunal bone (including 3 awl/hairpins); 8 bags of unworked faunal bone fragments; and 28 flotation, pollen, and charcoal samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Rillito Phase (A.D. 700-900) of the Preclassic period.

Between 1986 and 1988, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of 21 individuals were recovered from site AZ AA:16:94(ASM), west of the Tucson Mountains in Pima County, AZ. No known individuals were identified. The 218 associated funerary objects are 19 ceramic vessels (7 bowls, 11 jars, and 1 scoop); 1 sherd pendant; 3 secondary vessels shaped out of large sherds; 32 bags of sherds; 1 stone palette; 1 ground stone axe; 17 projectile points; 9 bags of lithics; 9 bags

of worked shell (including 63 whole shell beads); 1 bag of unworked shell fragments; 18 bags of worked faunal bone (including a minimum of 14 bone awl/hairpins and 2 antler tools); 12 bags of unworked faunal bone; and 95 flotation, pollen, and charcoal samples.

On the basis of archeological context, chronometric, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Rillito Phase (A.D. 700-900) of the Preclassic period.

Between 1986 and 1988, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from site AZ AA:16:97(ASM), west of the Tucson Mountains in Pima County, AZ. No known individual was identified. The three associated funerary objects are two bags of sherds and one bag of worked shell (one partial *Glycymeris* shell bracelet).

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Rillito Phase (A.D. 700-900) of the Preclassic period.

Between 1986 and 1988, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of two individuals were recovered from site AZ AA:16:161(ASM), west of the Tucson Mountains in Pima County, AZ. No known individuals were identified. The two associated funerary objects are two flotation samples.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Rincon Phase (A.D. 900-1100) of the Preclassic period.

Between 1982 and 1983, during legally authorized survey undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from the surface of site AZ AA:7:15(ASM), at the base of the Picacho Mountains in Pima County, AZ. No known individual was identified. The 10 associated funerary objects are 4 bags of sherds, 3 projectile points, and 3 bags of chipped stone.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of 59 individuals were recovered from the Los Rectangulos site, AZ AA:6:3(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 358 associated funerary objects are 55 complete or reconstructable ceramic vessels (1 scoop, 1 mug, 19 jars, 32 bowls, and 2 indeterminate); 2 sherd pendants; 2 worked sherds; 1 worked sherd spindle whorl; 75 bags of sherds; 1 polishing stone; 1 stone bead; 2 ground stone artifacts; 9 ground stone fragments; 10 projectile points; 58 bags of chipped stone; 25 bags of worked shell (including 16 shell beads, 1 shell tinkler, 2 shell pendants, 5 shell bracelet fragments, and 3 whole worked *Glycymeris* shells); 9 bags of unworked shell fragments; 2 bags of worked faunal bone (including 2 bone awls); 9 bags of unworked faunal bone fragments; and 97 flotation, pollen, soil, and radiocarbon samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation human remains representing a minimum of 13 individuals were recovered from the Gecko site, AZ AA:6:25(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 102 associated funerary objects are 9 complete or reconstructable ceramic vessels (7 bowls and 2 jars); 15 bags of sherds; 1 turquoise pendant; 1 stone bead; 7 bags of chipped stone; 4 bags of worked shell (including 2 complete shell bracelets, 2 complete shell pendants/earrings, and 2 shell beads); 1 bag of unworked shell fragments; 2 bags of worked faunal bone (including 3 bone awls); 1 bag of unworked faunal fragments; and 61 flotation, pollen, radiocarbon, and macrobotanical samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of four individuals were recovered from the Hotts Hawk site, AZ AA:6:31(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 31 associated funerary objects are 8 complete and reconstructable ceramic vessels (6 bowls and 2 jars); 1 unfired clay disk; 6 bags of sherds; 3 bags of chipped stone; 1 bag of worked shell (including 2 shell pendants/earrings); and 12 flotation and pollen samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the late Classic period (A.D. 1300-1450).

In 1984, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing one individual were recovered from the Crip site, AZ AA:2:69(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individual was identified. The 48 associated funerary objects are 14 bags of sherds; 2 mano fragments; 1 polishing stone fragment; 7 bags of chipped stone; 2 bags of worked shell (including 1 bracelet fragment and 1 fragment of worked shell); 2 bags of unworked shell; 4 bags of unworked faunal bone fragments; and 16 flotation, radiocarbon, and macrobotanical samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Gila Butte, Santa Cruz, and Sacaton Phases (A.D. 600-1150) of the Preclassic period.

In 1984, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation human remains representing one individual were recovered from the site, AZ AA:3:83(ASM), in the lower Santa Cruz Valley in Pinal County, AZ, in an area to be impacted by the Santa Rosa Canal. No known individual was identified. No associated funerary objects were recovered.

On the basis of archeological context, uncertain radiocarbon dating, ceramic, and other artifactual evidence, this site represents a Hohokam occupation with possible Preclassic and Classic period components (A.D. 600-1450).

Between 1985 and 1986, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing nine individuals were recovered from the Hind site, AZ AA:1:62(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 117 associated funerary objects are 1 reconstructable Estrella Red/Grey bowl;

1 Sweetwater Red/Grey scoop; 5 partially reconstructed plainware bowls; 2 partially reconstructed plainware jars; 1 partially reconstructed indeterminate vessel; 24 bags of sherds; 35 ground stone shell-working tools; 1 polishing stone; 2 projectile points; 9 bags of chipped stone; 4 bags of worked shell (including 1 shell bracelet fragment, 1 partial shell pendant, and worked fragments); 1 bag of unworked shell fragments; 3 bags of unworked faunal bone fragments; and 28 flotation, pollen, and radiocarbon samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the late Pioneer through early Sedentary Phases (A.D. 700-950) of the Preclassic period.

Between 1985 and 1986, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing 95 individuals were recovered from the Shelltown site, AZ AA:1:66(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 480 associated funerary objects are 23 ceramic vessels (2 miniature bowls, 3 miniature jars, 2 complete or partially reconstructed bowls, and 16 partial or complete jars); 3 worked sherds; 1 nose/ear spool; 1 possible figurine fragment; 101 bags of sherds; 1 stone bowl; 3 ground stone axes; 2 plummets; 4 manos; 1 ground stone bead; 10 ground stone shell-working tools; 1 stone jar cover; 8 ground stone fragments; 3 projectile points; 57 bags of chipped stone; 25 bags of worked shell (including 5 bracelet fragments, 2 caches of damaged shell bracelets, 11 pendants, 2 rings, and 5 bags of worked shell fragments); 16 bags of unworked shell fragments; 15 bags of worked faunal bone (including 2 bone hair pins, 5 bone awl fragments, 5 bone tubes, and 3 bags of worked bone fragments); 64 bags of unworked faunal fragments; and 141 flotation, pollen, mineral, and radiocarbon samples.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Gila Butte through Sacaton Phases (A.D. 600-1150) of the Preclassic period.

In 1989, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing four individuals were recovered from the Cake Ranch site, AZ AA:7:3(ASM), in the area of the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The five associated funerary objects are four bags of sherds and one bag of chipped stone.

On the basis of archeological context, chronometric dating (radiocarbon and archeomagnetic), architectural, ceramic, and other artifactual evidence, this site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

In 1978, during legally authorized testing by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing one individual were recovered from site NA15653, in the projected Salt-Gila Aqueduct portion of the Central Arizona Project right-of-way in Pinal County, AZ. No known individual was identified. The five associated funerary objects are four bags of sherds and one small shell pendant.

On the basis of archeological context, architectural, ceramic, and other artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150-1450).

Evidence provided by anthropological, archeological, biological, geographical, historical, kinship, linguistics, and oral tradition sources was considered in determining the cultural affiliation of these human remains and associated funerary objects. Bureau of Reclamation officials have determined that, pursuant to 43 CFR 10.2(e), the preponderance of the evidence suggests that the historic O'odham groups (Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona, including the San Xavier District) have a strong cultural affiliation with the prehistoric Hohokam who occupied the middle Gila Valley and surrounding areas. Great similarities in settlement patterns, economic systems, architecture, and material culture point to a close relationship between the Hohokam and the O'odham groups. The O'odham were well established along the rivers and in the deserts when the Spanish first arrived in northern Sonora and southern Arizona.

One of the two Pima moieties claims descent from the Hohokam, while the other moiety is said to have descended from the "emergers," those who overthrew the Hohokam leaders. Although the O'odham belong to the same linguistic group (Piman) as communities in what is now northern Mexico, shared vocabulary and syntax with Yuman language groups along the Colorado River suggests a long-term history of interaction that stretches back into prehistoric times in what is now southern Arizona.

Evidence also shows the interaction of ancestral Zuni and Hopi groups with the prehistoric Hohokam. This interaction is indicated by the presence of trade items, particularly ceramics. Such interaction continued into protohistoric and early historic times. In addition to trade, Hopi and Zuni migration traditions indicate that clans originating from areas south of the Colorado Plateau joined the plateau communities late in prehistoric times. These groups contributed ceremonies, societies, and iconography to the plateau groups. Both O'odham and Western Pueblo oral traditions indicate that some Hohokam groups may have left the Salt-Gila River Basin after disastrous floods and social upheaval. These groups traveled north and east, possibly to be assimilated by the Hopi and Zuni. These ties are reflected in some of the traditional ceremonies maintained as part of the annual ceremonial cycle.

The evidence suggests that the Hopi and Zuni are also culturally affiliated with the Hohokam. Their ancestors had trade relationships and other likely interactions with the Hohokam, similar to those found between groups in the early historic period. Hopi and Zuni oral traditions indicate that segments of the prehistoric Hohokam population migrated to the areas occupied by the Hopi and Zuni and were assimilated into the resident populations.

Based on the above-mentioned information, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 480 individuals of Native American ancestry. Officials of the Bureau of Reclamation also have determined that the 3,206 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham

Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'Odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact in writing Jon Czaplicki or Bruce Ellis, Bureau of Reclamation, Phoenix Area Office, P.O. Box 81169, Phoenix, AZ 85069-1169, telephone (602) 216-3862, before March 29, 2002. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: January 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

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BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects In the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and in the Control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1953, human remains representing a minimum of one individual (catalog number DU 6000) were removed from Marsh Pass, Navajo County, AZ, by Arnold Withers, a University of Denver Department of Anthropology faculty member, who donated the remains to the University of Denver Museum of Anthropology the same year. No known individual was identified. No associated funerary objects are present.

The remains were found in a deserted hogan. Marsh Pass is on the Navajo Reservation and is north of the Hopi Reservation. Consultations with members of the Pueblo of Laguna, New Mexico NAGPRA committee determined that it is possible that the human remains in the hogan could be those of a Pueblo person living in or visiting the area. They stated that Puebloan peoples were, and still are, resident all over the southwestern United States. Consequently, they believe that the Pueblos should be considered culturally affiliated with these human remains. In addition, hogans are a Navajo form of habitation, and the Navajo have traditionally buried or placed their dead in hogans. Consequently, it is believed that the Navajo should also be culturally affiliated with these remains.

In 1944, human remains representing a minimum of one individual (catalog numbers DU 6014 and DU 6056) were removed from Shiprock, San Juan County, NM, possibly by Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology. No known individual was identified. No associated funerary objects are present.

Shiprock is on the Navajo Reservation. Consultations with members of the Pueblo of Laguna, New Mexico NAGPRA committee determined that Puebloan peoples were, and still are, resident all over the Southwestern United States. Consequently, they believe that the Pueblos should be considered culturally affiliated with these human remains, as well as the Native American group on whose reservation the remains were found.

The area where these human remains were found has been identified as the ancestral territory of the Hopi and the Navajo. Consultation evidence indicates cultural affiliation with the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New

Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Based on the above-mentioned information, officials of the Bureau of Indian Affairs and the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the U.S. Department of the Interior, Bureau of Indian Affairs; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208-2406, e-mail jbernste@du.edu, telephone (303) 871-2543, before March 29, 2002. Repatriation of the human remains to the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: January 30, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–4579 Filed 2–26–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

Panoche Water District
Madera Irrigation District
Goleta Water District
Mercy Springs Water District
Arvin-Edison Water District
West Side Irrigation District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans. The above entitie(s) have developed a Water Management Plan (Plan), which reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by March 29, 2002.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at (916) 978–5208, or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address above, or by telephone at 916–978–5208 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of Water Management Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to section 3405(e)(1), these criteria must be developed "* * *with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation

6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Water Management Plans based on these criteria. 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.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of these Plans, please contact Mr. White to find the office nearest you.

Dated: November 5, 2001.

John F. Davis,

Regional Resources Manager.

[FR Doc. 02–4678 Filed 2–26–02; 8:45 am]

BILLING CODE 4210–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Preliminary)]

Non-Malleable Cast Iron Pipe Fittings From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–990 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of non-malleable cast iron pipe fittings, provided for in subheading 7307.11.00 of the Harmonized Tariff Schedule of the United States (HTS),[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 8, 2002. The Commission's views are due at Commerce within five business days thereafter, or by April 15, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on February 21, 2002, by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 14, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than March 12, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 19, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the

[1] Some subject goods may be imported under HTS subheading 7307.19.30, which covers cast ductile fittings of iron or steel.

Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: February 22, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4675 Filed 2–26–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of the data contained on the Workforce Investment Act (WIA) National Emergence Grant Activities, Quarterly Financial Status Report (ETA 9099). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 29, 2002.

ADDRESSES: Isabel Danley, Office of Grants and Contract Management, Employment and Training Administration, United States Department of Labor, 200 Constitution Avenue, NW, Room N–4720, Washington, DC 20210, 202–693–3047 (this is not a toll free number), Internet Address: *idanley@doleta.gov*, and FAX: 202–693–3362.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Public Law 105–220, dated August 7, 1998, and 20 CFR part 652, et al., Workforce Investment Act (WIA) Final Rules, dated August 11, 2000, the Department of Labor's Employment and Training Administration has revised the financial reporting instructions for the National Emergency Grants. Title I, Subtitle E—Administration, Sec. 185, Reports; Recordkeeping; Investigations, of the WIA, establishes that all recipients of funds under Title I must maintain records and submit reports in such form and containing such information as required by the Secretary. The WIA regulations at Part 667.300, Subpart C—Reporting Requirements, further state that "All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL."

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor's Employment and Training Administration (ETA) has determined that the currently required Standard Form (SF) 269, Quarterly Financial Status Report, and accompanying instructions are not adequate to capture project level data for the National Emergency Grants. Therefore, a slightly modified SF 269 and detailed instructions requiring financial reporting by project, by fund source, is proposed. ETA management in both the financial and programmatic areas concur that this level of detail is needed to assess program performance by project and to permit accountability by fund source. The data elements contained on the prototype format will be incorporated into software that will be provided electronically to NEG recipients for direct on-line reporting. The enhanced instructions will also be incorporated into the software for on-line reference.

Type of Review: New.

Agency: Department of Labor, Employment and Training Administration.

Title: Workforce Investment Act (WIA) Employment and Training Administration (ETA) Financial Reporting Requirements for National Emergency Grants.

OMB Number: 1205–0NEW.

Agency Number: ETA 9099.

Recordkeeping: The rules governing the record retention requirements for WIA Title I grantees are contained at 29 CFR 97.42 and 29 CFR 95.53, based on the nature of the entity receiving and expending funds.

Affected Public: States, Local Workforce Investment Boards, Indian Tribes, Alaska Native entities, Native Hawaiian organizations, entities determined to be eligible by the Governor of the State involved, and other entities that demonstrate to the Secretary the capability to effectively respond to the circumstances relating to particular disasters.

Form: WIA Quarterly Financial Status Report for National Emergency Grants.

Total Respondents: Forty.

Frequency: Quarterly.

Total Responses: 320 reports per year.

Average Time per Response: One-half hour.

Estimated Total Burden Hours: 160 Burden Hours. *See attached Burden Table.*

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2002.

Bryan T. Keilty,

Administrator, Office of Financial and Administrative Management.

BILLING CODE 4510–30–P

DOL-ETA REPORTING BURDEN FOR WIA FINANCIAL STATUS REPORT FOR NATIONAL EMERGENCY GRANTS						
	PY 2000			PY 2001		
	PY 2000	FY 2001	TOTAL	PY 2001	FY 2002	TOTAL
Average number of reports per entity per quarter	1	1	2	1	1	2
Average number of reports per entity per year	4	4	8	4	4	8
Average number of hours required for reporting per quarter per report	1/2	1/2	1/2	1/2	1/2	1/2
Average number of hours required for reporting per entity per year	2	2	4	2	2	4
Number of entities reporting	40	40	40	40	40	40
Average number of hours required for reporting burden per year	80	80	160	80	80	160
Total burden cost @ $26.78 per hour			$4285			$4285

NOTE: Reviewer should note that the National Emergency Grants are awarded to States under Master Grant Agreements to fund approved projects within the State, on an on-going, as eligible basis. As reflected on table, PY 2000 grants/projects are funded with PY 2000 and FY 2001 funds. Likewise, PY 2001 grants/projects are funded with PY 2001 and FY 2002 funds. Financial reports are required to be submitted by project for each source of funds received.

It should also be noted that the number of projects per State vary, thus creating the need to average the number of reports per entity per quarter and per year.

The total burden cost was based upon a GS – 12, Step 1 salary as calculated from Salary Table 2002-DCB, effective January 2002.

[FR Doc. 02–4615 Filed 2–26–02; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–028)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Makel Engineering, Inc., of Chico, California, has applied for an exclusive license to practice the inventions disclosed in U.S. Patent No. 5,520,753 entitled "PdTi Metal Alloy as Hydrogen or Hydrocarbon Sensitive Metal," (NASA Case No. 15,956–1); and U.S. Patent No. 5,668,301 entitled "Method and Apparatus for the Detection of Hydrogen Using a Metal Alloy," (NASA Case No. LEW 15,956–2), both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

Written objections to the prospective grant of a license should be sent to NASA Glenn Research Center.

DATES: Responses to this notice must be received by March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Glenn Research Center, Mail Stop 500–118, 21000 Brookpark Road, Cleveland, Ohio 44135.

Dated: February 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–4554 Filed 2–26–02; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District Fort Calhoun Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Appendix G to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) for Facility Operating License No. DPR–40, issued to the Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit 1 (FCS), located in Washington County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of Appendix G to 10 CFR part 50 to allow the application of the methodology approved for determining the pressure-temperature (P–T) limit curves in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Code Case N–640 entitled, "Alternate Reference Fracture Toughness for Development of P–T Curves for ASME Section XI, Division I."

The proposed action is in accordance with the licensee's application for an exemption dated December 14, 2001.

The Need for the Proposed Action

The licensee wants to revise the currently approved methodology for P–T limit calculations to incorporate the methodology approved for use in Code Case N–640. Code Case N–640 allows the use of the K_{IC} fracture toughness curve instead of the K_{IA} fracture toughness curve, as required by Appendix G to Section XI, for determining P–T limits for reactor pressure vessel (RPV) materials. The exemption is needed because the methodology in Code Case N–640 is less conservative in determining P–T limits than the approved methodology in Appendix G of Section XI. The proposed action also supports the licensee's application for a license amendment dated December 14, 2001, to revise the P–T limits in the technical specifications to reflect an operating period of 40 effective full power years (EFPY).

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of the code case.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes as set forth below, that there are no significant environmental impacts associated with the use of the alternative analysis methods to support the revision of the RPV P–T limit curves.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the FCS dated August 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on February 12, 2002, the staff consulted with the Nebraska State official, Julia Schmitt of the Nebraska Consumer Health Services Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 14, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web

site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of February 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Directorate IV, Chief, Section 2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–4590 Filed 2–26–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358, FAX (202) 418–3251 or via E-mail at *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–4591 Filed 2–26–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 78–11]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 78–11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B Medicare.

Approximately 100 RI 78–11 forms are completed annually. Each form requires approximately 10 minutes to complete for an annual estimated burden of 17 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax 202–418–3251, or via e-mail at *mbtoomey@opm.gov*.Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

FOR MORE INFORMATION CONTACT: Donna G. Lease, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–4594 Filed 2–26–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for a revised information collection. SF 3106, Application for Refund of Retirement Deductions/Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Approximately 17,000 SF 3106, Application for Refund of Retirement Deductions, will be processed annually. The SF 3106 takes approximately 30 minutes to complete for a total of 8,500 hours annually. Approximately 13,600

of SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, will be processed annually. The SF 3106A takes approximately 5 minutes to complete for a total of 1,133 hours. The total annual burden is 9,633.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415,
and
Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–4592 Filed 2–26–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Sunmission for OMB Review; Comment Request for Reclearance of an Information Collection Standard Form 2800 and 2800A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. SF 2800, Application for Death Benefits Under the Civil Service Retirement System (CSRS), is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service only so that survivors can make the needed elections regarding military service.

Approximately 68,000 SF 2800's are processed annually. The form requires approximately 45 minutes to complete. An annual burden of 51,000 hours is estimated. Approximately 6,800 applicants will use SF 2800A annually. This form also requires approximately 45 minutes to complete. An annual burden of 5,100 hours is estimated. The total burden is 56,100 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.
and
Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR MORE INFORMATION CONTACT: Donna G. Lease, Team Leader, Desktop Publishing and Printing Team, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–4593 Filed 2–26–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25424; 812–12452]

Goldman, Sachs & Co., et al.; Notice of Application

February 20, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies to use cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of certain money market funds and private investment companies; (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers; and (d) the affiliated broker-dealers to engage in principal transactions with, and receive brokerage commissions from, certain registered investment companies that are affiliated with the broker-dealers solely as a result of investing Cash Collateral in the money market funds or private investment companies.

Applicants: Goldman, Sachs & Co. ("Goldman Sachs"), Goldman Sachs Funds Management, L.P. ("GSFM"), Goldman Sachs Asset Management International ("GSAMI"), The Goldman Sachs Trust Company, Boston Global Investment Trust ("BGIT"), Goldman Sachs Trust ("GST"), and Goldman Sachs Variable Insurance Trust ("GSVIT").

Filing Dates: The application was filed on February 13, 2001 and amended on February 15, 2002.

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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 18, 2002, and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Howard B. Surloff, Esq., Goldman Sachs & Co., 32 Old Slip, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202)

942–0582, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 5th Street, NW, Washington DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Goldman Sachs is a New York limited partnership registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"), and as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). GSFM is a Delaware limited partnership registered as an investment adviser under the Advisers Act. GSAMI is a United Kingdom corporation registered as an investment adviser under the Advisers Act. Goldman Sachs, acting through Goldman Sachs Asset Management ("GSAM"), a business unit of its Investment Management Division, GSFM, and GSAMI are individually referred to as an "Adviser" and collectively as the "Advisers."[1] Goldman Sachs and any other broker-dealer that is controlled by or under common control with Goldman Sachs are individually referred to as an "Affiliated Broker-Dealer" and collectively as the "Affiliated Broker-Dealers."

2. Goldman Sachs, GSFM and GSAMI are directly or indirectly partnership or corporate subsidiaries of The Goldman Sachs Group, Inc. ("GS Group"), a Delaware corporation. GS Group is the general partner and a limited partner of Goldman Sachs. GSFM is a Delaware limited partnership of which the general partner is a corporation wholly-owned directly by GS Group and the sole limited partner is GS Group. GSAMI is an English company wholly-owned indirectly by GS Group.

3. GST and GSVIT, which are Delaware business trusts, are open-end management investment companies registered under the Act that have 59 and 9 series, respectively. Goldman Sachs serves as the principal underwriter for GST and GSVIT. GSAMI serves as investment adviser to 7 of GST's series and 2 of GSVIT's series. GSFM serves as investment adviser to 4 of GST's series and 2 of GSVIT's series. GSAM serves as investment adviser to the remaining series of GST and GSVIT. GST, GSVIT, their series, and any other registered management investment company, or series thereof, that is currently or in the future advised by GSAM, GSAMI, GSFM, or any other entity controlling, controlled by, or under common control with Goldman Sachs, that may participate as a lender in the securities lending program with the Goldman Sachs Trust Company as lending agent (the "Program") are referred to as the "Goldman Funds." Any other registered management investment companies or series thereof that may participate as lenders in the Program are referred to as the "Non-Goldman Funds." The Goldman Funds and Non-Goldman Funds are collectively referred to as the "Registered Lending Funds."[2]

4. BGIT is a Delaware business trust of which Delaware Trust Capital Management, a Delaware bank and trust company, is the sole trustee (the "Trustee"). The Enhanced Portfolio, a series of BGIT, is an unregistered investment vehicle relying on section 3(c)(7) of the Act, and is advised by GSAM. The Enhanced Portfolio, and any other unregistered investment vehicle relying on sections 3(c)(1) or 3(c)(7) of the Act that is advised by an Adviser, are referred to as the Private Investing Funds. The Enhanced Portfolio invests in a variety of debt securities that have a remaining maturity of 397 days or less.[3] Additional Private Investing Funds, which may or may not be a series of BGIT, may be created in the future. Future Private Investing Funds will invest in short-term liquid investments and will be advised by an Adviser. Certain Private Investing Funds will comply with rule 2a–7 under the Act. Units of beneficial interest ("Units") of the Private Investing Funds will not be subject to any sales load, redemption fee, asset-based sales charge or service fee.

5. The Advisers will create one or more registered open-end management investment companies, or series thereof, that are money market funds and comply with rule 2a–7 under the Act (the "Money Market Funds"). The Money Market Funds will be created for the purpose of implementing the Program and will be available solely to the Registered Lending Funds. Each Money Market Fund will be advised by an Adviser. Shares of the Money Market Funds ("Shares") will not be subject to any sales load, redemption fee, asset-based sales charge or service fee.

6. The Program will be administered by Boston Global Advisers ("BGA"), a separate operating division of The Goldman Sachs Trust Company, a New York limited purpose trust company and a wholly-owned subsidiary of GS Group. BGA will enter into a Securities Lending Agency Agreement ("Agency Agreement") with each Registered Lending Fund. BGA will enter into securities loan agreements ("SLAs") with certain entities ("Borrowers") designated by the Registered Lending Funds. Under the SLAs, BGA will lend securities to Borrowers in exchange for Cash Collateral or other types of collateral, such as U.S. government securities or irrevocable letters of credit, as permitted under the Agency Agreement. Under the terms of the Agency Agreement, each Registered Lending Fund will instruct BGA to invest any Cash Collateral in Units of a Private Investing Fund or Shares of a Money Market Fund.[4]

7. BGA represents that its personnel providing day-to-day lending agency services to the Goldman Funds will not provide investment advisory services to the Goldman Funds or participate in any way in the selection of portfolio securities for, or other aspects of the management of, the Goldman Funds. The duties to be performed by BGA as lending agent with respect to any Registered Lending Fund will not exceed the parameters described in Norwest Bank, Minnesota, N.A., SEC No-Action Letter (pub. avail. May 25, 1995).

8. With respect to securities loans that are collateralized by cash, the Borrower is entitled to receive a fixed fee based on the amount of cash held as collateral. The Registered Lending Fund in this case is compensated on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's fee. In the case of collateral other than Cash Collateral, the Registered Lending Fund receives a loan

[1] The term "Advisers" also includes any other division of, or other person controlled by, controlling or under common control with, Goldman Sachs.

[2] All existing Goldman Funds that currently intend to rely on the requested relief have been named as applicants. Any existing or future Goldman Fund, Non-Goldman Fund, Adviser, Affiliated Broker-Dealer, Money Market Fund (as defined below) or Private Investing Fund (as defined below) may rely on the requested relief only in accordance with the terms and conditions of the application.

[3] For this purpose, the remaining maturity of instruments is determined by reference to paragraph (d) of rule 2a–7 under the Act, except that variable rate corporate debt instruments are deemed to have a maturity equal to the period remaining until the next adjustment of the interest rate.

[4] Alternatively, a Registered Lending Fund may choose to instruct BGA to invest its Cash Collateral in pre-approved instruments. If a Registered Lending Fund chooses this option, it is anticipated that BGA will charge a fee based on a percentage of Cash Collateral invested by the Registered Lending Fund.

fee paid by the Borrower equal to the agreed upon fee times the percentage of the market value of the loaned securities specified in the SLA.

9. The applicants request relief to permit: (a) The Registered Lending Funds to pay BGA a fee based on a share of the revenue derived from securities lending activities; (b) the Registered Lending Funds to use Cash Collateral to purchase Shares of the Money Market Funds and Units of the Private Investing Funds; (c) the Registered Lending Funds to lend portfolio securities to the Affiliated Broker-Dealers; and (d) the Affiliated Broker-Dealers to engage in principal transactions with, and receive brokerage commissions from, the Non-Goldman Funds.

Applicants' Legal Analysis

A. Investment of Cash Collateral in Money Market Funds and Private Investing Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Registered Lending Fund to use Cash Collateral to acquire Shares of a Money Market Fund in excess of the limits imposed by section 12(d)(1)(A), and each Money Market Fund to sell its Shares to the Registered Lending Funds in excess of the percentage limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by section 12(d)(1) of the Act is created by the proposed investment of Cash Collateral in the Money Market Funds. Applicants further state that access to the Money Market Funds will enhance each Registered Lending Fund's ability to manage and invest Cash Collateral. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the Money Market Funds will not charge a sales load, redemption fee, asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. Conduct Rules ("NASD Conduct Rules")). Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except that (a) a Money Market Fund may acquire securities of a registered open-end investment company in the same group of investment companies as the Money Market Fund to the extent permitted by section 12(d)(1)(E) of the Act, and (b) a Money Market Fund may purchase shares of an affiliated money market fund for short-term cash management purposes to the extent permitted by an exemptive order.

4. Sections 17(a)(1) and 17(a)(2) of the Act prohibit an affiliated person or principal underwriter of a registered investment company, or any affiliated person of the affiliated person or principal underwriter ("Second Tier Affiliate"), acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser. Control is defined in section 2(a)(9) of the Act to mean "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company."

5. Applicants state that the Advisers serve as investment advisers to each of the Goldman Funds, Money Market Funds and Private Investing Funds, each such Adviser could be deemed to control the entities it advises, and the Advisers are under common control. Therefore, the Goldman Funds, Money Market Funds and Private Investing Funds could be deemed to be under common control and each Goldman Fund is an affiliated person of each Money Market Fund and each Private Investing Fund. In addition, applicants indicate that if a Non-Goldman Fund acquires 5% or more of a Money Market Fund's Shares or a Private Investing Fund's Units, the Money Market Fund or Private Investing Fund may be deemed to be an affiliated person of the Non-Goldman Fund. As a result, section 17(a) may prohibit each Money Market Fund and Private Investing Fund from selling its Shares or Units to, and redeeming its Shares or Units from, the Registered Lending Funds.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the 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.

7. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Registered Lending Funds to use Cash Collateral to purchase Shares of the Money Market Funds and Units of the Private Investing Funds and to permit the redemption of the Shares or Units. Applicants maintain that the terms of the proposed transactions are reasonable and fair because the Registered Lending Funds will (a) purchase and sell Shares of the Money Market Funds based on their net asset value determined in accordance with the Act, and (b) be treated like any other investors in the Private Investing Funds, and purchase and sell Units of the Private Investing Funds on the same terms and on the same basis as all other Unitholders of the Private Investing Funds. Applicants assert that the proposed transactions comply with each Goldman Fund's investment restrictions and policies and that an officer of each Non-Goldman Fund will certify that the proposed transactions comply with the Non-Goldman Fund's investment restrictions and policies. Applicants state that Cash Collateral of an Registered Lending Fund that is a money market fund will not be used to

acquire Units of any Private Investing Fund that does not comply with rule 2a–7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending. Applicants also state that the Private Investing Funds will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter for a registered investment company, or any Second Tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission.

9. Applicants state that the Registered Lending Funds (by purchasing and redeeming shares of the Money Market Funds and Units of the Private Investing Funds), the Advisers (by acting as investment advisers to the Goldman Funds, Money Market Funds and Private Investing Funds at the same time that the Registered Lending Funds' Cash Collateral is invested in Shares and Units), BGA (by acting as lending agent, investing Cash Collateral in Shares and Units, and receiving a portion of the revenue generated by securities lending transactions), the Money Market Funds (by selling Shares to and redeeming Shares from the Registered Lending Funds) and the Private Investing Funds (by selling Units to and redeeming Units from the Registered Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Applicants request an order in accordance with section 17(d) and rule 17d–1 to permit certain transactions incident to investments in the Money Market Funds and the Private Investing Funds.

10. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards.

11. Applicants state that the investment by the Registered Lending Funds in Units of the Private Investing Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the Private Investing Funds. In addition, applicants state that the Registered Lending Funds will purchase and sell Shares of the Money Market Funds based on their net asset value determined in accordance with the Act. Applicants also maintain that, to the extent any of the Registered Lending Funds invests in the Money Market Funds and Private Investing Funds as proposed, each Registered Lending Fund will participate on a fair and reasonable basis in the returns and expenses of the Money Market Funds and Private Investing Funds.

B. Payment of Lending Agent Fees to BGA

1. Applicants also believe that a lending agent agreement between the Registered Lending Funds and BGA, under which compensation is based on a share of the revenue generated by the Program, may be a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d–1. Consequently, applicants request an order to permit BGA, as lending agent, to receive a portion of the revenue generated by the Program.

2. Applicants propose that each Goldman Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BGA will meet the standards of rule 17d–1:

(a) In connection with the approval of BGA as lending agent for a Goldman Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees (the "Board"), including a majority of the directors or trustees that are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), will determine that (i) the Agency Agreement with BGA is in the best interests of the Goldman Fund and its shareholders, (ii) the services to be performed by BGA are appropriate for the Goldman Fund, (iii) the nature and quality of the services provided by BGA are at least equal to those services offered and provided by others, and (iv) the fees for BGA's services are within the range of, but in any event no higher than, the fees charged by BGA to comparable unaffiliated securities lending clients for services of the same nature and quality.

(b) Each Goldman Fund's Agency Agreement with BGA for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board, including a majority of Independent Trustees, makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby BGA will be compensated as lending agent based on a percentage of the revenue generated by a Goldman Fund's participation in the Program, the Goldman Fund's Board shall secure a certificate from BGA attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board will request and evaluate, and BGA shall furnish, such information and materials as the Board, with and upon the advice of agents, consultants or counsel, determines to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by BGA to other institutional investors for providing similar services.

(d) The Board of each Goldman Fund, including a majority of the Independent Trustees, will (i) determine at each regular quarterly meeting, on the basis of the reports submitted by BGA, that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Goldman Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period of not less than six (6) years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two (2) years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or any Second Tier Affiliate, acting as principal, to borrow money or other property from the registered investment company.

Applicants state that because an Affiliated Broker-Dealer would be under common control with the Goldman Funds, an Affiliated Broker-Dealer may be considered an affiliated person of a Goldman Fund. In addition, the Affiliated Broker-Dealers will be under control with the Private Investing Funds and Money Market Funds. Thus, if a Non-Goldman Fund acquired 5% or more of a Private Investing Fund or Money Market Fund, the Affiliated Broker-Dealers would be Second Tier Affiliates of the Non-Goldman Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Registered Lending Funds.

2. As noted above, section 17(d) and rule 17d-1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d-1 to permit the Registered Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Goldman Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers. [5] In this regard, applicants state that at least 50% of the loans made by the Goldman Funds, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Goldman Fund, including a majority of the Independent Trustees, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Goldman Fund. The Board, including a majority of the Independent Trustees, also will review quarterly reports on all lending activity.

D. Transactions by Non-Goldman Funds with Affiliated Broker-Dealers

1. As noted above, sections 17(a)(1) and 17(a)(2) prohibit certain principal transactions between a registered investment company and its affiliates. To the extent that the Affiliated Broker-Dealers, the Money Market Funds, and the Private Investing Funds are deemed to be under common control, applicants believe that an Affiliated Broker-Dealer could be considered an affiliated person of a Money Market Fund or Private Investing Fund and a Second Tier Affiliate of a Non-Goldman Fund that owns 5% or more of a Money Market Fund or Private Investing Fund.

2. Applicants request relief under sections 6(c) and 17(b) from section 17(a) to permit principal transactions between Non-Goldman Funds and the Affiliated Broker-Dealers where the affiliation between the parties arises solely as a result of an investment by a Non-Goldman Fund in Shares of a Money Market Fund or Units of a Private Investing Fund. Applicants state that there will be no element of self-dealing because the Affiliated Broker-Dealers have no influence over the decisions made by any Non-Goldman Fund. Applicants assert that each transaction will be the product of arm's length bargaining. Because the interests of the Non-Goldman Funds' investment advisers are solely aligned with those of the Non-Goldman Funds, applicants believe it is reasonable to conclude that the consideration paid to or received by the Non-Goldman Funds in connection with a principal transaction with an Affiliated Broker-Dealer will be reasonable and fair.

3. Section 17(e) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second Tier Affiliate, acting as broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds specified limits. Rule 17e-1 provides that a commission shall be deemed a usual and customary broker's commission if certain procedures are followed by the registered investment company.

4. Applicants request relief under section 6(c) from section 17(e) to the extent necessary to permit the Affiliated Broker-Dealers to receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for any Non-Goldman Fund for which an Affiliated Broker-Dealer becomes a Second Tier Affiliate solely because of the investment by the Non-Goldman Fund in Shares of a Money Market Fund or Units of a Private Investing Fund.

5. Applicants submit that brokerage or similar transactions by the Affiliated Broker-Dealers for the Non-Goldman Funds raise no possibility of self-dealing or any concern that the Non-Goldman Funds would be managed in the interest of the Affiliated Broker-Dealers. Applicants believe that each transaction between a Non-Goldman Fund and Affiliated Broker-Dealer would be the product of arm's length bargaining because each investment adviser to a Non-Goldman Fund would have no interest in benefiting an Affiliated Broker-Dealer at the expense of the Non-Goldman Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

General

1. The securities lending program of each Registered Lending Fund will comply with all present and future applicable guidelines of the Commission and/or its Staff regarding securities lending arrangements.

2. a. No Goldman Fund will purchase Units of a Private Investment Fund or Shares of a Money Market Fund unless participation in the Program has been approved by a majority of the Independent Trustees of the Goldman Fund. The Independent Trustees will evaluate the Program no less frequently than annually and determine that investing Cash Collateral in the Private Investing Funds and Money Market Funds is in the best interest of the shareholders of the Goldman Fund.

b. No Non-Goldman Fund will purchase Units of a Private Investing Fund or Shares of a Money Market Fund unless an officer of the Non-Goldman Fund certifies in writing that (i) participation in the Program has been approved by a majority of the Independent Trustees of the Non-Goldman Fund and (ii) the Independent Trustees of the Non-Goldman Fund will evaluate the Program no less frequently than annually to determine that the investment of Cash Collateral in the Private Investing Funds and Money Market Funds is in the best interests of the shareholders of the Non-Goldman Fund.

3. The approval of a majority of a Goldman Fund's Board, including a majority of the Independent Trustees, shall be required for the initial and subsequent approvals of BGA's service as lending agent for such Goldman Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to such Goldman Fund, and for any periodic review of loan transactions for which BGA has acted as lending agent pursuant to the Program.

[5] A "spread" is the compensation earned by a Goldman Fund from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower to the Goldman Fund (when non-cash collateral is posted) or of the excess retained by the Goldman Fund over a rebate rate payable by the Goldman Fund to the Borrower (when Cash Collateral is posted and then invested by the Goldman Fund).

Loans of Portfolio Securities to Affiliated Broker-Dealers

4. A Goldman Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making the loan.

5. The Goldman Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities lent, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

6. The Goldman Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

7. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Goldman Fund's Board and by a majority of the Independent Trustees (the "Schedule of Spreads").

b. The Schedule of Spreads will set forth rates of compensation to the Goldman Funds that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of the Goldman Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is lent to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to Affiliated Broker-Dealers will be made at no less than the higher spread.

e. The securities lending program for each Goldman Fund will be monitored on a daily basis by an officer of each Goldman Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to Affiliated Broker-Dealers for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Goldman Fund's Board, including a majority of the Independent Trustees.

8. The Boards of the Goldman Funds, including a majority of the Independent Trustees, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Boards and the conditions of any order that may be granted and that such transactions were conducted on terms that were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

9. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule to be approved by the Board of each Goldman Fund, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Goldman Fund, computed at market.

Investment of Cash Collateral in a Private Investing Fund or Money Market Fund

10. a. Investment in Units of a Private Investing Fund or Shares of a Money Market Fund by a particular Goldman Fund will comply with the Goldman Fund's investment objectives and policies. A Goldman Fund that complies with the requirements of rule 2a–7 under the Act will not invest its Cash Collateral in any Private Investing Fund that does not comply with rule 2a–7 under the Act.

b. No Non-Goldman Fund will be permitted to invest its Cash Collateral in Units of a Private Investing Fund or Shares of a Money Market Fund unless an officer of the Non-Goldman Fund certifies that such investment complies with the Non-Goldman Fund's investment objectives and policies. A Non-Goldman Fund that complies with the requirements of rule 2a–7 under the Act will not invest its Cash Collateral in any Private Investing Fund that does not comply with rule 2a–7 under the Act.

11. Investment in Shares of a Money Market Fund or Units of a Private Investing Fund by a particular Registered Lending Fund will be in accordance with the guidelines regarding the investment of Cash Collateral specified by the Registered Lending Fund in the Agency Agreement. A Goldman Fund's Cash Collateral will be invested in a particular Money Market Fund or Private Investing Fund only if that Money Market Fund or Private Investing Fund has been approved for investment by the Goldman Fund and if that Money Market Fund or Private Investing Fund invests in the types of instruments that the Goldman Fund has authorized for the investment of its Cash Collateral. A Non-Goldman Fund's Cash Collateral will be invested in a particular Money Market Fund or Private Investing Fund only if (a) an officer of the Non-Goldman Fund certifies that the Money Market Fund or Private Investing Fund has been approved for investment by the Non-Goldman Fund and (b) the Money Market Fund or Private Investing Fund invests in the types of instruments that the Non-Goldman Fund has authorized for the investment of its Cash Collateral.

12. Units of a Private Investing Fund or Shares of a Money Market Fund sold to and redeemed by a Registered Lending Fund will not be subject to a sales load, redemption fee, any asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

13. A Private Investing Fund or Money Market Fund will not acquire securities of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act, except that (a) a Money Market Fund may acquire securities of a registered open-end investment company in the same group of investment companies as the Money Market Fund to the extent permitted by section 12(d)(1)(E) of the Act, and (b) a Private Investing Fund or Money Market Fund may purchase shares of an affiliated money market fund for short-term cash management purposes to the extent permitted by an exemptive order.

Operation of the Private Investing Funds

14. A Private Investing Fund will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Investing Fund were a registered open-end investment company. With respect to all redemption requests made by a Registered Lending Fund, a Private Investing Fund will comply with section 22(e) of the Act. The Adviser to the Private Investing Fund will adopt procedures designed to ensure that the Private Investing Fund complies with sections 17(a), (d), and (e), 18, and 22(e) of the Act. The Adviser will also periodically review and periodically update as appropriate the procedures and will maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9)

under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and/or its Staff.

15. The net asset value per Unit with respect to Units of the Private Investing Funds will be determined separately for each Private Investing Fund by dividing the value of the assets belonging to that Private Investing Fund, less the liabilities of that Private Investing Fund, by the number of Units outstanding with respect to that Private Investing Fund.

16. Each Registered Lending Fund will purchase and redeem Units of a Private Investing Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of a Private Investing Fund. A separate account will be established in the shareholder records of a Private Investing Fund for the account of each Registered Lending Fund.

17. Each Private Investing Fund that operates as a money market fund and uses the amortized cost method of valuation, as defined in rule 2a–7 under the Act, will comply with rule 2a–7. Each such Private Investing Fund will value its Units, as of the close of business on each business day, using the amortized cost method to determine its net asset value per Unit. Each such Private Investing Fund will adopt the monitoring procedures described in rule 2a–7(c)(7) and the Adviser to the Private Investing Fund will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures. A Registered Lending Fund may only purchase Units of such a Private Investing Fund if the Adviser to the Private Investing Fund determines on an ongoing basis that the Private Investing Fund is operating as a money market fund using the amortized cost method of valuation as defined in rule 2a–7. The Adviser will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis on which the determination was made. This record will be subject to examination by the Commission and the Staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–4559 Filed 2–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Human Resources, Recruitment, Examination and Evaluation, Office of Recruitment

[Public Notice 3922]

Notice of Information Collection Under Emergency Review: Attitude Survey Regarding Employment Choices

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Human Resources, HR/REE/REC.

Title of Information Collection: Attitude Survey Regarding Employment Choices.

Frequency: Occasionally.

Form Number: There is no form number, this is an outsourced survey of questions to be answered orally by respondents.

Respondents: The respondents will be U.S. citizens between the ages of 18 and 40, living in all regions of the United States as well as the Washington D.C. Metropolitan area, from an ethnically diverse sample achieved by purchasing ethnically targeted lists. Respondents will be asked to self classify their ethnicity/race using a series of questions similar to those used on the U.S. Census.

Estimated Number of Respondents: 1200.

Average Hours Per Response: 20 minutes each.

Total Estimated Burden: 400 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Bureau of Human Resources Bureau, Recruitment, Examination and Evaluation, U.S. Department of State, Washington, DC 20520, who may be reached on (202) 261–8888.

Dated: February 14, 2002.

Kaara N. Ettesvold,

Deputy Executive Director, Human Resources, U.S. Department of State.

[FR Doc. 02–4654 Filed 2–26–02; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office Foreign Missions, Diplomatic Motor Vehicles

[Public Notice 3923]

30-Day Notice of Proposed Information Collection: Form DS–1972, Driver License and Tax Exemption Card Application; OMB Collection Number 1405–0105

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the

Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular Submission to extend a currently approved collection.

Originating Office: Bureau of Diplomatic Security, Office of Foreign Missions (DS/OFM).

Title of Information Collection: U.S. Department of State Driver Licenses and Tax Exemption Card Application.

Frequency: As often as is necessary to issue/renew driver licenses and/or tax exemption cards.

Form Number: DS–1972.

Respondents: Foreign mission personnel assigned to the United States: diplomatic, consular, administrative and technical, specified official representatives of foreign governments to international organizations, and their dependents.

Estimated Number of Respondents: 12,500.

Average Hours Per Response: .5 hours (30 minutes).

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Diplomatic Motor Vehicles, Office of Foreign Missions, 3507 International Place, NW, State Annex 33, Room 218, Washington, DC 20008, who may be reached on (202) 895–3528. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 28, 2001.

John R. Arndt,

Acting Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. 02–4655 Filed 2–26–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice No. 3888]

Advisory Committee on International Economic Policy Open Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 12 p.m. on Thursday, March 7, 2002, in Room 1406, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the March 7 meeting will be:

- Financing for Development and Current Development Issues
- The 2002 Trade Agenda

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647–5936 (Attention: Cecelia Walker); Tel: (202) 647–0847; or email: (*walkercr@state.gov*) by March 5, 2002. On the date of the meeting, persons who have pre-registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact Deborah Grout, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3526, Main State, Washington, DC 20520. Tel: 202–647–1826.

Dated: February 21, 2002.

Deborah Grout,

Executive Secretary, Advisory Committee on International Economic Policy, Department of State.

[FR Doc. 02–4653 Filed 2–26–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11479.
Date Filed: February 5, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR Fares 0067 dated 1 February 2002, Resolution 015h—USA Add-on Amounts between, USA and UK, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11480.
Date Filed: February 5, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0547 dated 1 February 2002, Mail Vote 199—Resolution 010b, TC3 Within South Asian Subcontinent Special Passenger, Amending Resolution from India to Bangladesh, Intended effective date: 20 February 2002.

Docket Number: OST–2002–11541.
Date Filed: February 8, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MEX–EUR 0046 dated 8 February 2002, Mexico-Europe Expedited Resolution 002z, Intended effective date: 15 March 2002.

Docket Number: OST–2002–11542.
Date Filed: February 8, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–ME 0158 dated 8 February 2002, North Atlantic-Middle East Expedited Resolutions r1–r4, Intended effective date: 15 March 2002.

Docket Number: OST–2002–11543.
Date Filed: February 8, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0548 dated 8 February 2002, Mail Vote 198–Resolution 010a r1–r9, TC3 Between Japan, Korea and South East Asia Special, Passenger Amending Resolution between Japan

and China, (excluding Hong Kong SAR and Macau SAR), Intended effective date: 18 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–4636 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending February 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3853.

Date Filed: February 5, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 26, 2002.

Description: Amendment No. 1 of United Air Lines, Inc. to its application for a certificate of public convenience and necessity, requesting authority to engage in scheduled foreign air transportation of persons, property, and mail between (1) From points behind the United States via the United States and intermediate points to a point or points in France and beyond; (2) from points behind the United States via the United States and intermediate points to French Departments of America and beyond; (3) from points behind the United States via the United States to New Caledonia and/or Wallis and Futuna; (4) from points behind the United States via the United States and intermediate points to French Polynesia and beyond; and, (5) from points behind the United States via the United States and intermediate points to Saint Pierre and Miquelon and beyond.

Docket Number: OST–2002–11481.

Date Filed: February 5, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 26, 2002.

Description: Application of Edelweiss Air, Ltd., pursuant to 49 U.S.C. section 41301, 14 CFR part 211 and subpart B, requesting a foreign air carrier permit to engage in charter foreign air transportation of persons, property, and mail between Switzerland and the United States.

Docket Number: OST–2002–11528.

Date Filed: February 7, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 2002.

Description: Application of Continental Micronesia, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail from points behind the United States via the United States and intermediate points to a point or points in France and beyond to the full extent authorized by the recently-signed U.S.-France "open skies" agreement. Continental Micronesia also requests authority to integrate its U.S.-France certificate authority with its existing exemption and certificate authority.

Docket Number: OST–2002–11526.

Date Filed: February 8, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 2002.

Description: Application of Air Georgian Limited, pursuant to section 402 and subpart B, requesting a foreign air carrier permit to engage in: (1) Transborder scheduled combination services between a point or points in Canada and a point or points in the United States; and, (2) charter operations, carrying persons, property and mail, between Canada and the United States and other charters, pursuant to 14 CFR part 212.

Docket Number: OST–2002–11535.

Date Filed: February 8, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 2002.

Description: Application of Crossair Ltd. d/b/a Swiss, pursuant to 49 U.S.C. section 41302, part 211.20 and subpart B, requesting an initial foreign air carrier permit to engage in foreign air transportation of persons, property, and mail between Zurich and Boston, Newark, Washington, DC, New York (JFK), Los Angeles, Miami and Chicago; and, between Geneva and New York (JFK).

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–4635 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Central Illinois Regional Airport, Bloomington, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of Parcel C–2, a 4.1 acre portion of Parcel C, and Parcel C–3, a 4.9 acre portion of Parcel C–1. Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel C (61.9 acres) was acquired in 1966 under FAAP grant 9–11–011–C603. Parcel C–1 (34.72 acres) was acquired in 1966 without federal participation. It is the intent of the Bloomington-Normal Airport Authority (BNAA) to sell Parcel C–2 and Parcel C–3 in fee. This notice announces that the FAA intends to authorize the disposal of the subject airport property at Central Illinois Regional Airport, Bloomington, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proceeds from the sale of the land will be

maintained in an interest bearing account and used for reimbursement of Airport Improvement Program eligible development.

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

FOR FURTHER INFORMATION CONTACT: Denis Rewerts, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7195/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Bloomington-Normal Airport Authority, Central Illinois Regional Airport, 3201 CIRA Drive, Suite 200, Bloomington, IL 61704.

SUPPLEMENTARY INFORMATION: The following legal description of the proposed land sale is:

Parcel C–2

A part of the Northwest Quarter of Section 6, Township 23 North, Range 3 East of the Third Principal Meridian, McLean County, Illinois, more particularly described as follows: Commencing at the Northwest Corner of said section 6, thence south 107 feet, more or less along the West Line of said Northwest Quarter to the South Right-of-Way of Illinois Route 9; thence east 18 feet, more or less, along said Right-of-Way Line to the Point of Beginning. From the Point of Beginning, thence south 97 feet, more or less, along a line which is parallel with said West Line to a point of curve; thence southeast 131.5 feet, more or less along an arc of a curve concave to the northeast with a radius of 182 feet and central angle of 41°–25′, more or less, to a point of tangency; thence southeast 247 feet, more of less, to a point of curve; thence southeast and east 143 feet, more or less along a curve concave to the northeast with a radius of 182 feet and a central angle of 45°–00′ to a point of tangency; thence east 125 feet, more or less; thence north 445 feet, more or less, along a line which forms an angle of 89°–20′ with the last described course to said South Right-of-Way Line; thence westerly along said South Right-of-Way Line to the Point of Beginning, containing approximately 4.1 acres.

Parcel C–3

A part of the Northwest Quarter of Section 6, Township 23 North, Range 3 East of the Third Principal Meridian, McLean County, Illinois, more particularly described as follows: Commencing at the Northwest Corner of said section 6; thence east 798 feet, more or less, along the North Line of said Northwest Quarter; thence south 123 feet, more or less, perpendicular to said North Line to a point on the South Right-of-Way Line of Illinois Route 9, said point being the Point of Beginning. From said Point of Beginning, thence 188 feet, more or less, along a line which forms an angle to the right of 181°–06′ with the last described course; thence southwest 283 feet, more or less, along a line which forms an angle to the right 203°–14′, more or less; thence east 551 feet, more or less, along a line which forms an angle to the right of 67°–26′, more or less, thence north 462 feet, more or less, to a point on said South Right-of-Way Line lying 430 feet, more or less, east of the Point of Beginning; thence west along said South Right-of-Way Line to the Point of Beginning, containing 4.9 acres, more or less.

This legal description does not represent a boundary survey and is based on a suggested land description provided by the BNAA.

Issued in Des Plaines, Illinois on January 30, 2002.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–4629 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at George M. Bryan Field Airport, Starkville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the City of Starkville to waive the requirement that a 0.73-acre parcel of surplus property, located at the George M. Bryan Field Airport, be used for aeronautical purposes.

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

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Mack D. Rutledge, Mayor of Starkville, Mississippi at the following address: City Hall, 101 Lampkin Street, Starkville, MS 38902–0310.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by City of Starkville, MS to release 0.73 acres of surplus property at the George M. Bryan Field Airport. The property will be purchased by the Mississippi State University Loyalty Foundation, and they will erect an aircraft hangar. The property is located on the North end of the airport and is adjacent to property that has been previously released to Mississippi State University. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request inspect the request, notice and other documents germane to the request in person at the City of Starkville, Mississippi.

Dated: Issued in Jackson, Mississippi on January 15, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 02–4631 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Impact Statement on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Airspace Redesign

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a draft environmental impact statement.

SUMMARY: The Federal Aviation Administration (FAA) has released a Draft Environmental Impact Statement (DEIS) for redesign of the airspace in the Baltimore-Washington Area. The proposed action is to redesign the airspace in the Baltimore-Washington metropolitan area excluding noise abatement procedures. This involves developing new routes, altitudes and procedures to take advantage of the new Potomac Consolidated TRACON, improved aircraft performance, and emerging air traffic control technologies. The proposed action is not dependent on development at any of the airports in the study area.

The airspace redesign study encompasses the area within a 75-nautical mile radius centered on a radio navigational aid in Georgetown, within the District of Columbia. The study area comprises portions of five states—Delaware, Maryland, Pennsylvania, Virginia and West Virginia—and the entire District.

This EIS is tiered from an earlier EIS that evaluated environmental impacts that could result from a decision to physically consolidate the four Baltimore-Washington metropolitan areas TRACONs into a new building somewhere in the area. The first tier or "building EIS" resulted in FAA issuing a Record of Decision (ROD) on June 3, 1999. The ROD documented the decision to consolidate four existing TRACONs into a new facility at Vint Hill in Fauquier County, Virginia. Subsequent to the ROD, the decision was made to consolidate the Richmond TRACON into the PCT. However, the incorporation of the Richmond TRACON has no effect on the scope of the airspace redesign.

The purpose of this airspace redesign is to take full advantage of the benefits afforded by the newly consolidated TRACON facility by increasing air traffic efficiency and enhancing safety in the Baltimore-Washington metropolitan area.

Copies of the DEIS are available for review at major libraries in the study area. A summary of the DEIS can be viewed on the Internet at http://www.faa.gov/ats/potomac.

DATES: Written comments on the DEIS will be accepted until May 23, 2002. Written comments may be sent to: FAA Potomac TRACON Air Traffic 2400, Attention: Fred Bankert, 3699 Macintosh Drive, Warrenton, VA 20187. Oral or written comments may also be delivered at a series of six public hearings that will be held in April 2002 and will be announced separately.

FOR FURTHER INFORMATION CONTACT: Potomac Consolidated TRACON (800) 762–9531, Email: 9–AEA–PCT–Comments@faa.gov.

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructural constraints such as adequate radar and radio frequency coverage. The primary function of the TRACON is to provide a variety of air traffic control services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in flight traffic advisories and navigational assistance. When fully operational, the Potomac Consolidated TRACON will provide terminal radar air traffic control services to the four major airports and a number of small reliever airports located within the Baltimore-Washington area. It will also provide service to the Richmond, VA airport.

This EIS considers four airspace redesign alternatives consisting of a No Action Alternative and three other alternatives that address changes in routes and altitudes for aircraft away from the close-in airport environment. Changes to initial departure or final arrival procedures are not proposed. Generally, aircraft would be three to five miles from the departure/arrival airport before the changes that are proposed for each alternative would take effect, with the exception of the No Action Alternative, which considers no changes to the existing airspace. None of the alternatives would produce significant environmental impact. Additionally, current noise abatement procedures at the airports would not be changed under any of the alternatives.

Dated: February 20, 2002 in Washington, DC.

Barbara Jo Cogliandro,

Air Traffic Manager, Potomac Consolidated TRACON.

[FR Doc. 02–4630 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44 Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held March 18–22, 2002 from 9 am–5 pm.

ADDRESSES: The meeting will be held at Eurocontrol, Rue de la Fusee, 96, Brussels, B–1130, Belgium.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- March 18:
- Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review Summary of Previous Meeting, Presentations, Discussions)
- Subgroup 4 (Database Exchange Format):
- Continue goals and objectives for new subgroup; Start work on new document
- March 19, 20 & 21:
- Continue Subgroup 4 discussions and document work
- March 22:
- Closing Plenary Session (Brief Summary of Subgroup 4 meeting, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 21, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–4628 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–MGW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Morgantown Municipal Airport, Morgantown, WV

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 and use the revenue from a PFC at Morgantown Municipal 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 March 29, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry Clark of the Federal Aviation Administration at the following address: 176 Airport Circle, Room 101, Beaver, West Virginia 25813–9350.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Morgantown under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Program Manager, PFC, Airports Division, 1 Aviation Plaza, Jamaica, New York, 11434, (718) 553–3354. 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 and use the revenue from a PFC at Morgantown, Municipal 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).

On January 29, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Morgantown 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 April 18, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–06–C–00–MGW.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2004.

Proposed charge expiration date: March 1, 2008.

Total estimated PFC revenue: $229,493.

Brief description of proposed project(s):

- Design and Construct ARFF/Snow Equipment Facility
- Acquire Snow Removal Equipment
- Design and Construct Taxiway A Extension
- Rotating Beacon
- Safety Area Study Runway 18/36
- Master Plan Study

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On Demand Air Carriers and Unscheduled Part 121 Charter Operators for Hire to the General Public.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** which is the FAA Regional Airports Office.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Morgantown.

Issued in Jamaica, New York on January 30, 2002.

Eleanor Schifflin,

Program Manager, PFC, AEA–620, Eastern Region.

[FR Doc. 02–4627 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA is publishing the names of persons denied exemptions from the vision standard in 49 CFR 391.41(b)(10) and the reasons for the denials.

FOR FURTHER INFORMATION CONTACT: For information about the applications addressed in this notice, Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, MC–PSD, (202) 366–2990; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption."

Accordingly, the FMCSA individually evaluated 251 exemption requests on their merits and made a determination that the applicants do not satisfy the criteria established to demonstrate that granting the exemptions is likly to achieve an equal or greater level of safety that exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

One hundred fourteen applicants lacked sufficient recent driving experience over the past three years. Eighteen applicants had no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption. Forty-one did not have 3 years of experience driving a commercial motor vehicle on public highways with the vision deficiency. Fourteen did not have 3 years recent experience driving a commercial motor vehicle with the vision deficiency. One applicant did not qualify for the exemption because he met the vision standards at 49 CFR 391.41(b)(10). Thirteen applicants did not qualify because they were charged with moving violation(s) in conjunction with commercial motor vehicle accident(s), which is a disqualifying offense under the exemption criteria. Two applicants had more that two commercial motor vehicle moving violations during a 3-year period and/or application process. Each applicant is only allowed two moving citations. One applicant did not have sufficient peripheral vision in the better eye to qualify for an exemption. Twelve applicants' licenses were suspended during the 3-year period because of a moving violation and, therefore, could not qualify for the exemption. Two applicants could not qualify for the exemption because they were convicted of two serious traffic violations within the 3-year period. An applicant for a vision exemption is only allowed two traffic violations in a 3-year period, of which only one can be a serious violation. Eight applicants did not have verifiable proof of commercial driving experience during a 3-year period under normal highway operating conditions that would serve as an adequate predictor of future safety performance. Fifteen applicants were involved in commercial motor vehicle accidents in which they contributed to the accident. Based on information received from State motor vehicle records, two applicants did not demonstrate the level

of safety required for interstate driving because of excessive moving/non-moving violations during the 3-year period. Three applicants did not hold licenses which allowed operation of a CMV over 10,000 pounds gross vehicle weight rating for all or part of the 3-year period. An applicant did not qualify for the exemption because he was not willing to make the required statement on the application indicating "he is otherwise qualified under 49 CFR 391.41(b)(1–13), without the benefit of any other waiver or exemption." Another applicant did not meet the minimum requirements for consideration for a renewal exemption. According to information submitted with the application and other records obtained by FMCSA, the applicant drove a CMV in interstate commerce during the 2-year period the exemption was in effect while in violation of other medical qualification requirements. Three applicants were placed in the "other" category for having multiple reasons for denial. One applicant in this category had only two years of CMV experience and his license was suspended during the 3-year period. Another applicant in this category met the Federal vision requirements but only drove 16–18 hours per week. The third applicant was involved in an accident during the 3-year period where he contributed to the accident and was also involved in a CMV accident during the 3-year period where he was cited in the accident.

Summary of Causes for Not Granting Exemptions

The FMCSA has denied the following petitions for exemption from the vision standard in 49 CFR 391.41(b)(10). All applicants were previously notified of their denials by individual letters. The purpose of publishing these denials is simply to comply with 49 U.S.C. 31315(b)(4)(C), by periodically publishing in the **Federal Register** the names of persons denied exemptions and the reasons for such denials.

REASON—DOES NOT HAVE SUFFICIENT DRIVING EXPERIENCE OVER THE PAST THREE YEARS UNDER NORMAL HIGHWAY OPERATING CONDITIONS THAT WOULD SERVE AS AN ADEQUATE PREDICTOR OF FUTURE SAFE PERFORMANCE

Last name	First name	Last name	First name
Adler,	Dennis	Beroney,	Raymond
Alberry,	David	Betit,.	Thomass
Andrews,	John	Biondo,	Michael
Arthur,	Edwin	Brazil,	Bobby
Bacon,	Norman	Butts,	Edwin
Badger,	Donald	Cassatt,	Daryl
Badrick,	Richard	Chapman,	Franklin
Bailey,	Marcus	Clark,	Karen
Baptiste, Jr.	Barney	Cliffe,	Terry
Barrett,	William	Cline,	Lonnie
Bell, Jr.	Roy	Collins,	Warren
Confreda,	John	Hanson,	Ronald
Davidson,	Ronnie	Harrington,	Michael
Davis,	Geraldine	Harris,	Edward
Denson,	Sidney	Hatton,	Richard
Doolittle,	William	Heayberd,	John
Downie,	Neville	Henry,	Thomas
DuRussell,	Donald	Hernandez,	Guadalupe
Dykstra,	Stephen	Higgs,	Gail
Falkner,	Gary	Hildebrand,	Todd
Farmer,	Allan	Hougland,	Randall
Fiamma,	John	Huffman,	Willard
Flannery,	William	Jelks,	Gloria
Fleming,	Martin	Johnson,	Jimmy
Forslin,	Steven	Kervin,	Christopher
Gonzalez,	Valentin	Knecht,	Herbert
Gove,	Laurel	Kocher,	Stan
Gowan, III	Walter	Long, Jr.	Mearlin
Green,	Frederick	Lovett,	Gordon
Griggs,	Larry	Marshall,	Chester
Hall,	Johnnie	Mather,	Michael
Hamilton,	Daniel	Mazyck,	Jason
Hamm,	John	McCabe,	William
McIntosh,	Judith	Robinson,	Daniel
McIntyre,	Larry	Robison,	Leroy
Medley,	Donald	Rogers,	Larry
Michael,	Anthony	Schnase,	Gerald
Morris,	Gary	Schneider,	Michael
Morris,	Charles	Simon,	Arlynn
Murayama,	Robin	Simpson,	Wayne
Murray,	Stephen	Smith,	Donald
Navish,	Charles	St. John,	Gary
Neal, Sr.	Charles	Sutter,	Jarid
Noonan,	Robert	Tate,	Brian
Oddy,	Kevin	Thaxton, Jr.	Ronald
Ott,	William	Thomason,	Douglas
Parks,	Fred	Trosclair,	Kory
Patterson,	James	Valente,	John
Phelps,	Eugene	Vance,	Jack
Prezzia,	Ronald	Vorse,	Charles

REASON—DOES NOT HAVE SUFFICIENT DRIVING EXPERIENCE OVER THE PAST THREE YEARS UNDER NORMAL HIGHWAY OPERATING CONDITIONS THAT WOULD SERVE AS AN ADEQUATE PREDICTOR OF FUTURE SAFE PERFORMANCE—Continued

Last name	First name	Last name	First name
Proudfit,	Terry	Wendt,	Gerald
Raulston,	Stephen	White,	Walter
Ream,	Harley	White,	Arthur
Reimer,	Phillip	Wilkerson,	Noel
Reno,	Thomas	Wilkerson, Jr.	William
Wilson,	Kent.		
Windnagel.	Jeff.		
Workman,	Ronald.		
Wyatt, Jr.	Paul.		

REASON—HAS NO EXPERIENCE OPERATING A COMMERCIAL MOTOR VEHICLE AND THEREFORE PRESENTED NO EVIDENCE FROM WHICH THE FMCSA CAN CONCLUDE THAT GRANTING THE EXEMPTION IS LIKELY TO ACHIEVE A LEVEL OF SAFETY EQUAL TO THAT EXISTING WITHOUT THE EXEMPTION

Last name	First name	Last name	First name
Aleem,	Alphonso	Kirby,	Christopher
Baldit,	Jose	LaCour,	Robert
Benton,	Damon	McFadden,	Wilbert
Burns,	James	Nastro,	Antonino
Ezell,	Carlos	Rodrigues,	Osvaldo
Fisher,	David	Shirk,	Rhonda
Fotheringham,	John	Veloz,	Nelson
Gomez,	Juan	Young,	Kevin
Harper,	Steven.		

REASON—DOES NOT HAVE 3 YEARS OF EXPERIENCE DRIVING A COMMERCIAL MOTOR VEHICLE WITH VISION DEFICIENCY ON PUBLIC HIGHWAYS

Last name	First name	Last name	First name
Barraco,	Matthew	Johnson,	Eugene
Browning,	James	Johnston,	Mickey
Buckman, Jr	Jay	Jones,	Benjamin
Clark,	William	Kirouac,	Donald
Dean,	John	Leonard,	Larry
Denton, Jr	James	Luckey,	William
Edwards,	Dewain	MacPherson,	Scott
Ensor,	Walter	McDermott,	Eric
Farmer, Sr.	Charles	McKenzie,	Benjamin
Ferking,	Timothy	Meador,	Michael
Gasper,	Shawn	Mullins,	Michael
Hall,	Robert	Simmons,	James
Hoffarth,	Michael	Sims,	LeTroy
Holley,	Tony	Smith,	Rex
Hurst,	Edward	Smith,	Eric
Jacobs,	Vincent	Thomas,	Steven
Johnson,	Daryl	Turner,	Ronald
Valles,	Humberto	Wáner,	Eugene
Varga,	Joseph	Weber, Jr.	George
Vines,	Phillip	Weekly,	Wesley
Vollink,	Tunis		

REASON—DOES NOT HAVE 3 YEARS OF EXPERIENCE DRIVING A COMMERCIAL MOTOR VEHICLE WITH VISION DEFICIENCY

Last name	First name	Last name	First name
Boersma,	John	Jones,	Earnest
Burnworth,	Keith	Kempke,	Clarence
Demaree,	Robin	Milbourn,	Peggy
Gallion,	Pamela	Riordan, II	Donald
Goode,	Larry	Ryals,	Robert
Jackson, Sr.	Joseph	Walker,	Norman
Johnson,	Howard	Yezerski,	Thomas

REASON—MEETS THE VISION REQUIREMENTS OF 49 CFR 391.41(b)(10). DOES NOT NEED A VISION EXEMPTION

Last name	First name	Last name	First name
Pearl,	Steven		

REASON—CHARGED WITH MOVING VIOLATIONS(S) IN CONJUNCTION WITH COMMERCIAL MOTOR VEHICLE ACCIDENT(S). DISQUALIFYING OFFENSE

Last name	First name	Last name	First name
Allen,	Ronald	Cooper,	William
Briones, Jr.	Robert	Galloway,	Jerry
Cooper,	William	Sequera,	Anthony
Galloway,	Jerry	White,	Ronald
Luce,	Robert	Williams,	James
Miller,	Stuart	Moose,	Harry

REASON—HAD MORE THAN 2 COMMERCIAL MOTOR VEHICLE VIOLATIONS DURING 3-YEAR PERIOD AND/OR APPLICATION PROCESS. EACH APPLICANT IS ONLY ALLOWED 2 MOVING CITATIONS

Last name	First name	Last name	First name
Brannon,	Robert	Pearson, Jr.	Jesse

REASON—DOES NOT HAVE SUFFICIENT PERIPHERAL VISION IN THE BETTER EYE TO QUALIFY FOR AN EXEMPTION

Last name	First name	Last name	First name
Williams,	Sandy		

REASON—COMMERCIAL DRIVER'S LICENSE WAS SUSPENDED DURING 3-YEAR PERIOD IN RELATION TO A MOVING VIOLATION. APPLICANTS DO NOT QUALIFY FOR AN EXEMPTION WITH A SUSPENSION DURING A 3-YEAR PERIOD

Last name	First name	Last name	First name
Abbott,	Harold	Kulibert,	James
Dolbear,	Cecil	Logan,	Leonard
Eagling,	Donald	Relien,	Steven
Gard,	Kevin	Right,	Willie
Griffin,	Clarence	Shell,	Juan
Hogan,	Earl	Howe,	Marvin

REASON—HAD TWO SERIOUS COMMERCIAL MOTOR VEHICLE VIOLATIONS WITHIN THE 3-YEAR PERIOD. EACH APPLICANT IS ONLY ALLOWED A TOTAL OF TWO MOVING CITATIONS, OF WHICH ONLY ONE CAN BE SERIOUS

Last name	First name	Last name	First name
Persun,	Bryon	Walden,	Billy

REASON—DOES NOT HAVE VERIFIABLE PROOF OF COMMERCIAL DRIVING EXPERIENCE OVER THE PAST 3 YEARS UNDER NORMAL HIGHWAY OPERATING CONDITIONS THAT WOULD SERVE AS AN ADEQUATE PREDICTOR OF FUTURE SAFE PERFORMANCE

Last name	First name	Last name	First name
Barber,	Jimmy	Harding, Jr.	Glenn
Bennett,	Aaron	High,	Frank
Cole,	Kevin	Lamontagne,	Kenneth
Fryar	Sheldon	McJunkin,	Walter

REASON—CONTRIBUTED TO ACCIDENT(S) IN WHICH APPLICANT WAS OPERATING A COMMERCIAL MOTOR VEHICLE. DISQUALIFYING OFFENSE

Last name	First name	Last name	First name
Campbell,	Paul	Schnautz,	Paul
Craddock,	Don	Shipley,	John

REASON—CONTRIBUTED TO ACCIDENT(S) IN WHICH APPLICANT WAS OPERATING A COMMERCIAL MOTOR VEHICLE. DISQUALIFYING OFFENSE—Continued

Last name	First name	Last name	First name
Doeing,	Gerald	Smith,	Henry
Hurley,	Robert	Sucharda,	Todd
Mangen,	Phillip	Triguerio,	Rick
Manuel,	Allen	Williams,	Samuel
Matthews. Jr.	Ronald	Wood,	Bernard
Reveal,	Gary.		

REASON—BASED ON INFORMATION RECEIVED ON STATE-ISSUED DRIVING REPORT, APPLICANT DID NOT DEMONSTRATE THE LEVEL OF SAFETY REQUIRED FOR INTERSTATE DRIVING (EXCESSIVE MOVING/NONMOVING VIOLATIONS DURING 3-YEAR PERIOD)

Last name	First name	Last name	First name
Davison,	Gregory	Houston,	Jon

REASON—DID NOT HOLD A LICENSE WHICH ALLOWED OPERATION OF VEHICLES OVER 10,000 POUNDS GROSS VEHICLE WEIGHT RATING FOR ALL OR PART OF 3-YEAR PERIOD

Last name	First name	Last name	First name
Slinker,	Elston	Turek,	Timothy
Sumner,	Brian.		

REASON—APPLICANT NOT WILLING TO MAKE REQUIRED STATEMENT INDICATING THEY ARE OTHERWISE QUALIFIED UNDER 49 CFR 391.41(B)(1)–(B)(13) WITHOUT THE BENEFIT OF ANY OTHER WAIVER OR EXEMPTION

Last name	First name	Last name	First name
Laderoute, Jr.	Fred.		

REASON—DOES NOT MEET THE MINIMUM REQUIREMENTS FOR CONSIDERATION FOR A RENEWAL EXEMPTION

Last name	First name	Last name	First name
Watt,	Ronald.		

REASON—OTHER (MULTIPLE REASONS FOR DENIAL)

Last name	First name	Reasons for denial
Byerly,	Dennis	(1) only has two years of CMV experience and (2) his license was suspended during the 3-year period
Harbin,	Duane	(1) currently meets Federal vision requirements and (2) only drives 16–18 hours per week.
Lathrop,	Jeffery	(1) involved in an accident during the 3-year period where he contributed to accident and (2) involved in CMV accident during 3-year period where he was cited in the accident.

Authority: 49 U.S.C. 322,31315, and 31136; 49 CFR 1.73.

Issued on: January 29, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–4637 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11661]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADY SADIE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the

effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 29 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11661. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* LADY SADIE. *Owner:* Henry & Shirley Goldman.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length 55′ beam 16′, tonnage 35 gross 28 net"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Sightseeing, Snorkeling, Sport Fishing" "Coast wise within the main Hawaiian Islands."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1992. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This waiver will not greatly impact other operations as our operation is much smaller than others and will not be able to compete with the larger operators because of the limited passenger carrying capacity of the vessel. Other operators conducting the same type of operations, operate much larger vessels with carrying capacities of forty to sixty passengers."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "There will be no impact whatsoever on U.S. Shipyards as this vessel would not be dry-docked in those types of facilities."

Dated: February 21, 2002.

By Order of the Maritime Administrators.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–4659 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11663]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BOADICEA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11663. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: BOADICEA. Owner: Paul Stiso.

(2) Size, capacity and tonnage of vessel. According to the applicant: "the vessel is 24 net tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"I plan to charter around Florida from Fort Myers to Key West. Occasional trips to other locals in and around Caribbean and Bahama Islands, also Dry Tortugas."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1985. Place of construction: Taipei, Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "My vessel will be a very small operation doing local charters of a cruise around the area on a day to day basis with occasional trips as mentioned above. I will be the Captain and my wife Nina will crew. I don't think that I will have an adverse effect on any existing U.S. operator. I may occasionally bareboat."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I do not think that I will have any adverse effect on any U.S. vessel or shipyards."

Dated: February 21, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–4657 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11662]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PERCEPTION.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11662. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590, Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* PERCEPTION. *Owner:* James Weisman.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "*Size:* LOA 50 ft.; *Capacity:* 13'4" Tonnage 20"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "NORTHEAST NEW ENGLAND COAST (Martha's Vineyard), CHARTERS"

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1984. *Place of construction:* Kerikeri, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The granting of this waiver would have little impact on existing passenger vessels in this area, specifically there are currently only 4 similar vessels operating around the waters off Martha's Vineyard, and only two out of the harbor of Vineyard Haven from which my vessel would operate."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "Only one shipyard for building vessels currently exists in this area of the US and it only builds wooden vessels. Perception is Steel and therefore adverse impact locally would be non-existent. Since the boat requires yearly hauling and maintenance, operation of this vessel for commercial passenger use (charters) would bring further business to the local shipyards."

Dated: February 21, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–4660 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11660]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MISS TEAK.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as

represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11660. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MISS TEAK. Owner: Alphus N. Knapp, Jr. and Paula A. Knapp.

(2) Size, capacity and tonnage of vessel. According to the applicant: "49.8 foot Defever Pilothouse Trawler * * * Gross weight of 22 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "I plan to live and operate this charter business in Carrabelle, Florida. I plan to take trips around Appalachicola Bay and in the Gulf of Mexico between Crystal River and Panama City, Florida."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1979. Place of construction: Kaohsiung, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "At this time I know of no other captain who is operating a charter service of this type or * * * of this size in this area. My request, if approved, will have no impact on the charter * * * industry in this area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "At this time I know of no * * * boat builder who builds trawlers of this size in this area. My request, if approved, will have no impact on the * * * boat building industry in this area."

Dated: February 21, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–4658 Filed 2–26–02; 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 October 5, 2001 (66 FR 51093).

DATES: Comments must be submitted on or before March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Tina Morgan at the National Highway Traffic Safety Administration, Office of Plans and Policy (NPP–22), 202–366–2562. 400 Seventh Street, SW, Room 5208, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Highway Crash Data Collection for Evaluation of Antilock Braking Systems (ABS) & Rear Impact Guards.

OMB Number: 2127—New.

Type of Request: New Collection.

Abstract: Safety standard 121 (49 CFR 571.121) requires Antilock Brake Systems (ABS) on air-brake equipped truck-tractors manufactured on or after March 1, 1997 and on semi trailers and single-unit trucks equipped with air-brakes and manufactured on or after March 1, 1998. Safety Standards 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength and energy absorption capability of rear impact guards on full trailers and semi trailers over 10,000 pounds Gross Vehicle Weight Rating manufactured on or after, January 26, 1998. NHTSA's Office of Plans and Policy is planning a highway crash data collection effort that will provide adequate information to perform an evaluation of the effectiveness of ABS and rear impact guards for heavy trucks.

Affected Public: State and Local Governments.

Estimated Total Annual Burden: 4,373.

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.

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 20, 2002.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 02–4634 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

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

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 21, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12672–N	.....	Safety-Kleen Systems, Inc., Columbia, SC.	49 CFR 173.28(b)(7)(iv)(B)	To authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse. (modes 1, 2)
12920–N	RSPA–02–11638.	Epichem, Inc., Haverhill, MA.	49 CFR 173.181(c)	To authorize the transportation in commerce of pyrophoric materials in combination packagings with inner containers that exceed currently authorized quantities. (modes 1, 3)
12921–N	RSPA–02–11640.	GATX Rail, Chicago, IL.	49 CFR 173.31(b)(3)(ii) & (iii)	To authorize the transportation in commerce of certain DOT–111A60ALW aluminum tank cars equipped with alternative head protection for use in transporting various hazardous materials. (mode 2)
12924–N	RSPA–02–11641.	Infineum USA LP, Linden, NJ.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain attached during unloading various hazardous materials without the physical presence of an unloader. (mode 2)
12925–N	RSPA–02–11631.	U.S. Department of Energy, Oak Ridge, TN.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of solidified sodium metal in certain non-DOT specification bulk packaging. (mode 1)
12926–N	RSPA–02–11623.	S.C. Johnston & Son, Inc., Washington, DC.	49 CFR 173.306	To authorize the transportation in commerce of aerosols, non-flammable, Division 2.2 in non-DOT specification containers. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12927–N	RSPA–02–11628.	Tri-Wall, A Weyerhaeuser Business, Butler, IN.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications. (mode 1)
12928–N	RSPA–02–11629.	Pacer Global Logistics, Dublin, OH.	49 CFR 172.201(c)	To authorize the transportation in commerce of rail cars containing various hazardous materials to be transported with alternative shipping papers. (mode 2)
12929–N	.....	Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.301(j)(1)	To authorize the transportation in commerce of certain DOT specification and non-DOT specification cylinders manufactured to a foreign specification which are charged for export only. (modes 1, 3)
12930–N	RSPA–02–11624.	Roeder Cartage Company, Inc., Lima, OH.	49 CFR 173.32b(b)(1), 180.352(b)(3)	To authorize the transportation of certain lined DOT Specification cargo tanks which are not subject to the internal visual inspections for use in transporting certain Class 8 hazardous materials. (modes 1, 3)
12931–N	RSPA–02–11626.	Quality Terminals, Chester, SC.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain attached during unloading of Class 8 hazardous materials without the physical presence of an unloader. (mode 2)
12933–N	RSPA–02–11622.	In-X Corporation, Denver, CO.	49 CFR 173.306(a)(2)(i)	To authorize the transportation in commerce of a specially designed device equipped with a small cylindrical pressure vessel containing limited quantity of helium gas overpacked in cardboard containers. (modes 1, 2, 3, 4)

[FR Doc. 02–4624 Filed 2–26–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 14, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 21, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application number	Docket number	Applicant	Modification of exemption
4354–M		PPG Industries, Inc., Pittsburgh, PA (See Footnote 1)	4354
8554–M		TRADESTAR Corporation, West Jordan, UT (See Footnote 2)	8554
8723–M		TRADESTAR Corporation, West Jordan, UT (See Footnote 3)	8723
10677–M		Primus AB, Solna, SW (See Footnote 4)	10677
11373–M		Chemical Resources, Inc., Louisville, KY (See Footnote 5)	11737
11379–M		TRW Automotive, Occupant Safety System, Washington, MI (See Footnote 6)	11379
11827–M		NRS America Inc., White Plains, NY (See Footnote 7)	11827
12068–M	RSPA–98–3850.	Sea Launch Company, L.L.C., Long Beach, CA (See Footnote 8)	12068
12443–M	RSPA–00–7209.	Dow Reichhold Specialty Latex, LLC, Chickamauga, GA (See Footnote 9)	12443
12885–M	RSPA–01–11209.	U.S. Department of Agriculture, Forest Service, Missoula, MT (See Footnote 10)	12885
12892–M		Bulk Truck & Transport Service, Inc. Hanover, IN (See Footnote 11)	12892

(1) To modify the exemption to authorize an additional loading method for the transportation of a Division 6.1 material in UN standard 1H1 drums and 6HA1 composite packagings.

(2) To modify the exemption to authorize a new cargo tank design for the transportation of Division 1.5 and 5.1 materials in bulk.

(3) To modify the exemption to authorize a new cargo tank design for the transportation of Division 1.5 and 5.1 materials in bulk.

(4) To modify the exemption to authorize the transportation of additional Division 2.1 materials and an increase in maximum charging pressure.

(5) To modify the exemption to authorize for-hire contract carriers the ability to transport Division 4.2 materials on the same vehicle with Class 8 materials.

(6) To modify the exemption to authorize extension of the 10-hour lot duration for the non-DOT specification pressure vessels used as components of automobile vehicle safety systems.

(7) To modify the exemption to authorize the transportation of an additional Division 5.1 material in certain lined DOT Specification IM 101 portable tanks and UN standards UN 31A Intermediate Bulk Containers.

(8) To modify the exemption to authorize the transportation of additional Class 3 and Division 2.2 materials contained in the Sea Launch Integrated Launch Vehicle with and without payload.

(9) To modify the exemption to eliminate the need for a bi-directional derail device on tracks used for unloading certain hazardous materials.

(10) To modify the exemption to authorize eliminating the requirement that the pump in the helitorch frame be an explosion proof diaphragm fuel transfer pump when transporting a Class 3 material.

(11) To modify the exemption to reissue the exemption originally issued on an emergency basis for continued use of MC 331 cargo tanks that do not meet the minimum rear bumper requirements specified in the HMR transporting Division 2.1 materials.

[FR Doc. 02–4625 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Suspicious Activity Report by Money Services Businesses

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a new form, "Suspicious Activity Report by Money Services Businesses." The form will be used by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious activity to the Department of the Treasury. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before April 29, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, *Attention:* PRA Comments—SAR–MSB Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* again with a caption, in the body of the text, "*Attention:* PRA Comments—SAR–MSB Form."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Patrice Motz, Chief, MSB, Casinos and IRS Programs, and Leonard Senia, Regulatory Program Specialist (Team Leader), FinCEN, at (202) 354–6015; Judith R. Starr, Chief Counsel and Christine L. Schuetz, Attorney-Advisor, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION: *Title:* Suspicious Activity Report by Money Services Businesses.

OMB Number: Unassigned.

Form Number: TD F 90–22.56.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), P.L. 107–56.

administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On March 14, 2000, FinCEN issued a final rule requiring certain categories of money services businesses ("MSBs"), including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions. (65 FR 13683). The final rule can be found at 31 CFR 103.20.

On December 20, 2001, FinCEN published a notice in the **Federal Register** ("FinCEN Issuance 2001–2"), reminding money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that the requirement to report suspicious transactions would apply to transactions occurring on or after January 1, 2002. In FinCEN Issuance 2001–2, FinCEN directed such entities to report suspicious activity on the existing bank suspicious activity report, Form TD F 90–22.47, until such time as FinCEN developed a form to be used solely by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks. This notice contains the draft form that has been specifically developed for use by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious activity ("SAR–MSB").

The information collected on the new form is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, tax violations, fraud, and other financial crimes.

Reports filed by MSBs required to report suspicious transactions under 31 CFR 103.20, and any reports filed voluntarily by other MSBs will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

The draft SAR–MSB is presented only for purposes of soliciting public comment on the form. This form should not be used at this time to report suspicious activity. A final version of the form will be made available at a later date. In the meantime, money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks should continue to report suspicious activity on TD F 90–22.47, and are requested to enter the letters "MSB" in block letters at the top of the form and in the empty space in item 5 of the TD F 90–22.47.

Type of Review: New information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 35 minutes per response. Estimated number of respondents = 10,000. Estimated Total Annual Responses = 10,000. Estimated Total.

Annual Burden Hours: 350,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 21, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–02–P

Attachment—Suspicious Activity Report by Money Services Businesses

TD F 90-22.56
Treasury Form
February 2002

Suspicious Activity Report by Money Services Business

Please type or print. Always complete entire report (see instructions).

OMB No. Unassigned

1

1 Check the box if this report corrects a prior report. ☐

2 Type of filer (check **all** that apply)

a ☐ Issuer of money order(s) b ☐ Seller of money order(s) c ☐ Redeemer of money order(s)
d ☐ Issuer of traveler's check(s) e ☐ Seller of traveler's check(s) f ☐ Redeemer of traveler's check(s)
g ☐ Money transmitter h ☐ U.S. Postal Service i ☐ Other _____

Part I Customer Information

3 Type of customer
a ☐ Purchaser b ☐ Payee c ☐ Both

4 Individual's last name or Entity name	5 First name	6 Middle initial

7 Permanent address (number, street, and apt. or suite no.)

8 City	9 State	10 Zip code	11 Country (if not U.S.)

12 Government issued identification document
a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Number _____ f Issuing state or country _____

13 Taxpayer identification number	14 Date of birth	15 Phone number (include area code)
	MM / DD / YYYY	( ) –

16 Customer number, if any	17 Occupation/Type of business

18 Endorser's last name or Entity name, if any	19 Endorser's first name, if any	20 Bank account number of endorser, if any

Part II Suspect Instrument/Funds Transfer Information

21 Financial services involved in suspect transaction(s) (Check **all** that apply.)
a ☐ Funds transfer b ☐ Money order c ☐ Traveler's Check d ☐ Other _____

22 Date or date range of suspicious activity	23 Total dollar amount involved in suspicious activity
From ____/____/____ To ____/____/____ (MM DD YYYY)	$ .00

24.1 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. _____ c Ending No. _____

24.2 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. _____ c Ending No. _____

24.3 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. _____ c Ending No. _____

25.1 Funds transfer number	25.2 Funds transfer number
a Issuer name _____	a Issuer name _____
b No.	b No.

25.3 Funds transfer number a Issuer name _____ b No.	25.4 Funds transfer number a Issuer name _____ b No.
25.5 Funds transfer number a Issuer name _____ b No.	25.6 Funds transfer number a Issuer name _____ b No.

2

26 Category of suspicious activity (Check **all** that apply.)
a ☐ Money Laundering b ☐ Structuring c ☐ Terrorism d ☐ Other (specify)_____

27 Character of suspicious activity (Check **all** that apply.)
a ☐ Unusual use of money order(s) or Traveler's check(s) b ☐ Unusual use of funds transfer(s)
(1) ☐ Two or more individuals working together
(2) ☐ Alters transaction to avoid filing a CTR form ($10,000 or more)
(3) ☐ Comes in frequently and purchases less than $3,000
(4) ☐ Alters transaction to avoid completion of funds transfer record or money order or traveler's check record ($3,000 or more)
(5) ☐ Same individual(s) using multiple locations over a short time period
(6) ☐ Two or more individuals using the same identification
(7) ☐ Individual using multiple of false identification documents

Part III Transaction Location Information

28 ☐ Multiple selling and/or paying business locations

29 Type of business location
a ☐ Selling business location b ☐ Paying business location c ☐ Both

30 Legal name of business		31 Doing business as	
32 Permanent address (number, street, and suite no.)	33 Taxpayer identification number	34 Business phone number (include area code)	
35 City	36 State	37 Zip code	38 Country (if not U.S.)

Part IV Law Enforcement Agency Information

39 Has a law enforcement agency already been contacted (excluding submission of a SAR-MSB)? If so, check the appropriate box.
a ☐ DEA d ☐ U.S. Customs Service g ☐ Other Federal i ☐ Local law enforcement
b ☐ FBI e ☐ U.S. Postal Inspection Service h ☐ State law enforcement j ☐ Tribal law enforcement
c ☐ IRS f ☐ U.S. Secret Service
k ☐ Agency name (for g, h, i, or j) _____

40 Name of person contacted at law enforcement agency	41 Phone number (include area code)	42 Date contacted __/__/__ MM DD YYYY

Part V Reporting Business Information (if *different* from Location Information in Part III)

43 Legal name of business		44 Doing business as	
45 Permanent address (number, street, and suite no.)			46 Taxpayer identification number
47 City	48 State	49 Zip code	50 Country (if not U.S.)

Part VI Contact for Assistance

51 Last name of contact person	52 First name		53 Middle initial
54 Title/Position	55 Work phone number (include area code)	56 Date prepared __/__/__ MM DD YYYY	

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for a money services business (MSB) to notify appropriate law enforcement agencies of suspicious transactions and activities that occur by, through, or at a MSB. This report is authorized by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal regulatory agencies, State law enforcement agencies, the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and recordkeeping burden for this form is estimated to average 35 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and the Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act. P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part VII Suspicious Activity Information - Explanation/Description 3

Explanation/description of suspicious activity. This section of the report is **critical**. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist below as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the money services business (MSB) should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reporting.

a. **Explain** whether the transaction(s) was completed or only attempted.
b. **Indicate** where the possible violation of law(s) took place (main office, branch, agent location, etc.).
c. **Indicate** whether the possible violation of law(s) is an isolated incident or relates to another transaction(s).
d. **Indicate** whether U.S. or foreign currency and/or U.S. or foreign negotiable instrument(s) were involved. If so, provide the amount and/or description of the currency and/or instrument (U.S. currency, cashier's check, domestic or international money order, traveler's check, funds transfer, etc.).
e. **Indicate** a time period, if it was a factor in the suspicious transaction(s), for example, specify the time and whether it occurred during AM or PM. If the activity covers more than one day, identify the time of day when such activity occurred most frequently.
f. **Identify** any employee or other individual suspected of improper involvement in the transaction(s).
g. **For Selling or Paying Locations, indicate** if there is a surveillance photograph and/or video tape of the customer.
h. **For Selling or Paying Locations,** if you do not have a record of a government issued identification document, **describe** the type, issuer and number of any alternate customer identification information that is available (*e.g.*, for a credit card, specify the name of the customer, name(s) of the issuer and the card company, and the credit card number).
i. **For Selling or Paying Locations,** if you do not have any identifying information on the customer such as a name, an address, an identification document, etc., **describe** the customer including the approximate age (*e.g.*, 20, 25, 30, 35), whether "female" or "male", etc.
j. **For Issuers, indicate** if the endorser of money order(s) and/or traveler's check(s) is different than payee. If so, provide individual's name or entity name; bank's name, city, state and country; ABA routing number; customer's bank account number; foreign non-bank name (if any); correspondent bank name and account number (if any); etc.
k. **Describe and retain** supporting documentation.
l. If you are correcting a previously filed report, describe the changes that are being made (see Where and How To Make A Report, item 3 on page 6).

Note: ***DO NOT*** **include supporting documentation when filing this form** (for example, copies of instruments; receipts; sale, transaction or clearing records; photographs, surveillance audio and/or video tapes), but retain such documentation along with a copy of this form for a period of **5 years**. All supporting documentation must be made available, upon request, to appropriate law enforcement authorities and regulatory agencies.

Enter explanation/description in the space below. If necessary, continue the narrative on a duplicate of this page or a blank page.

Part II Continued - Items 24 and 25 4

24.4 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.5 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.6 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.7 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.8 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.9 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.10 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.11 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

24.12 Serial number(s) of money order(s) ☐ or traveler's check(s) ☐ a Issuer name _____
b Starting No. c Ending No.

25.7 Funds transfer number
a Issuer name _____
b No.

25.8 Funds transfer number
a Issuer name _____
b No.

25.9 Funds transfer number
a Issuer name _____
b No.

25.10 Funds transfer number
a Issuer name _____
b No.

25.11 Funds transfer number
a Issuer name _____
b No.

25.12 Funds transfer number
a Issuer name _____
b No.

25.13 Funds transfer number
a Issuer name _____
b No.

25.14 Funds transfer number
a Issuer name _____
b No.

25.15 Funds transfer number
a Issuer name _____
b No.

25.16 Funds transfer number
a Issuer name _____
b No.

25.17 Funds transfer number
a Issuer name _____
b No.

25.18 Funds transfer number
a Issuer name _____
b No.

25.19 Funds transfer number
a Issuer name _____
b No.

25.20 Funds transfer number
a Issuer name _____
b No.

25.21 Funds transfer number
a Issuer name _____
b No.

25.22 Funds transfer number
a Issuer name _____
b No.

25.23 Funds transfer number
a Issuer name _____
b No.

25.24 Funds transfer number
a Issuer name _____
b No.

Suspicious Activity Report by Money Services Business Reporting Instructions

5

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents, who report suspicious transactions to the government voluntarily or as required by 31 CFR 103.20, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations that require immediate attention, such as ongoing money laundering schemes, a money transmitter, or issuer, seller, or redeemer of money orders and/or traveler's checks shall immediately notify, by telephone, an appropriate law enforcement authority. In addition, a timely SAR-MSB form shall be filed, including recording any such notification in Part IV on the form.

When To Make A Report:

1. Money transmitters and issuers, sellers and redeemers of money orders and/or traveler's checks that are subject to the requirements of the Bank Secrecy Act and its implementing regulations (31 CFR Part 103) are required to file a suspicious activity report (SAR-MSB) with respect to:

   a. Any transaction conducted or attempted by, at or through a money services business involving or aggregating funds or other assets of at least $2,000 (except as described in section "b" below) when the money services business knows, suspects, or has reason to suspect that:

      i. The transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the nature, source, location, ownership or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

      ii. The transaction is designed, whether through structuring or other means, to evade any regulations promulgated under the Bank Secrecy Act; or

      iii. The transaction has no business or apparent lawful purpose and the money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

   b. To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or a pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

2. The Bank Secrecy Act requires that each financial institution (including a money services business) file currency transaction reports (CTRs) in accordance with the Department of the Treasury implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR (IRS Form 4789) whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, a money transmitter, or issuer, seller or redeemer of money orders and/or traveler's checks must file two forms, a CTR to report the currency transaction and a SAR-MSB to report the suspicious aspects of the transaction. If the suspicious activity involves a currency transaction that is $10,000 or less, the institution is only required to file a SAR-MSB.

3. A money services business (MSB) is required to file a SAR-MSB no later than 30 calendar days after the date of initial detection of facts that constitute a basis for filing the report.

6

Where and How To Make A Report:

1. Send each completed Suspicious Activity Report by Money Services Business (SAR-MSB) form to the following address.

Detroit Computing Center, ATTN: SAR-MSB, P.O. Box 33117, Detroit, MI 48232-5980

2. Complete each suspicious activity report in its entirety **using all available information**. Leave blank any items that do not apply or for which information is unavailable.

3. If you are correcting a previously filed report, check the box at the top of the report (item 1) and follow the instructions for item 1 below.

4. ***DO NOT* include supporting documentation when filing the suspicious activity report.** Instead, retain a copy of the SAR-MSB and all original supporting documentation or business record equivalent (including copies of instruments, receipts, photographs, surveillance audio or video tapes, etc.) for 5 years from the date of filing the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

5. A report must be **typed or legibly handwritten**.

General Instructions:

Dates - Whenever dates are requested (*e.g.*, for a date of birth, date of suspicious activity, date prepared), they should be entered using the format "mm/dd/yyyy," where "mm" is the month, "dd" is the day, and "yyyy" is the year. Zero (0) should precede any single digit number. For example, if the individual's birth date is June 1, 1948, enter 06/01/1948. If the month or day is not available or unknown, enter zeros in the space for "mm" and "dd." For example, 06/00/2002 indicates an unknown day in June 2002.

Numbers - Wherever information about monetary amounts is requested, the amounts should be entered using the format "$0,000,000.00". (Round to the nearest dollar.) All amounts should be reported in US Dollars (USD).

Specific Instructions:

Item 1. Corrects a prior report.—If you are correcting a previously filed report, check the box at the top of the report (item 1). Complete the report in its entirety and include the corrected information in the applicable boxes on the form. Then describe the changes that are being made in Part VII, Suspicious Activity Information Explanation/Description, in accordance with line l.

Item 2. Type of filer.—Check the appropriate box(es) for the type of filer.

Part I - Customer Information

Item 3. Type of customer.—Check box "a" if the customer purchased a money order(s) or traveler's check(s) or initiated a funds transfer(s) that is the subject of this report (*i.e.*, a purchaser). Check box "b" if the customer cashed a money order(s) or traveler's check(s) or received payment of a funds transfer(s) that is the subject of this report (*i.e.*, a payee). Check box "c" if both boxes "a" and "b" apply.

Items 4, 5, and 6. Name of customer or entity.—If the name of the customer is known, complete Items 4 through 6. In the case of an individual, enter the last name in Item 4, first name in Item 5 and middle initial in Item 6. If there is no middle initial, leave Item 6 BLANK. If the MSB knows that the individual has an "alias" or "also known as" ("A.K.A.") name, enter such name in Part VII. If the customer is an entity, enter its "doing business as" ("dba") name, that is, the name by which the entity is commonly known, in Item 4. If there is more than one customer, make as many copies of page 1 of the form as necessary and provide the information about each customer in duplicate copies of Part I. Attach the additional copies of page 1 to the report. When there is more than one purchaser and/or more than one payee (*e.g.*, two or more

transactions), you must indicate whether each customer is a purchaser or payee and list the instrument or funds transfer numbers associated with each customer in Part VII.

Items 7, 8, 9, 10 and 11. Permanent address.—To the extent that part or all of the address is known, complete items 7 - 11 in the following manner. Enter the permanent street address, city, two-letter state/territory abbreviation used by the U.S. Postal Service and ZIP code of the person identified in Part I. For the Zip code, enter the first five digits beginning from the left. Include the last four digits of the Zip, if known. Enter in Item 7 any apartment or suite number and road or route number. Do not enter a Post Office (P.O.) box number in Item 7 unless the P.O. Box number is the only known address. If the address is in a foreign country, enter the city, province or state, postal code and the name of the foreign country. If the country is the United States, leave Item 11 BLANK. Complete any part of the address that is known, even if the entire address is not known (*e.g.*, if the filer knows only the foreign country name, complete item 11).

Item 12. Record of a government issued identification document of the customer.—If the MSB has a record of a government issued identification document, check the appropriate box in "a, b, c or d" showing the type of any document provided. If you check box "d" for "**Other**", specify the type of document used (*e.g.*, enter "military ID" for a military or military/dependent identification card). If a driver's license, passport, alien registration card, or other reliable government issued identification document is available or known for the customer, enter the number of the document in part "e" and name of the issuing state or country for that document in part "f". If more space is required, enter the information in Part VII.

Item 13. Taxpayer identification number (TIN).—If the customer identified in Items 4 through 6 is an individual with a social security number (SSN), enter that number in Item 13. If the customer in Item 4 is an entity, enter the employer identification number (EIN) in Item 13. Do not include any dashes or other substitutes.

Item 14. Date of birth.—If an individual is identified in Part I, enter the individual's date of birth, if known. Use the date format "mm/dd/yyyy" where "mm" is the month, "dd" is the day, and "yyyy" is the year.

Item 15. Phone number.—If known, enter the home or business telephone number including area code of the individual or entity listed in Items 4 through 6. If more than one telephone number is known (*e.g.*, temporary number such as a hotel number that the customer is staying at), enter the information in Part VII.

Item 16. Customer number, if any.—Enter the customer number, if any (*e.g.*, a preferred customer card number or a frequent user card number).

Item 17. Occupation/Type of business.—If known, identify the occupation, profession or business that most specifically describes the individual in Part I (*e.g.*, accountant, attorney, car dealer, carpenter, dentist, doctor, farmer, plumber, real estate agent, truck driver, unemployed teacher, retired mechanic). Do not use nondescriptive terms such as businessman, merchant, self-employed, store owner (unless store's name is provided), unemployed, retired, etc. If the individual's business activities can be described more fully than just by occupation, provide additional information in Part VII.

Items 18 and 19. Endorser's name or entity, if any.—If the reported activity involves instruments (*e.g.*, money orders or traveler's checks) and the endorser's name (found on the reverse side of the instrument) can be determined, enter the endorser's name. In the case of an individual, enter the last name in Item 18, first name in Item 19. In the case of an entity, enter the entire name in Item 18.

Item 20. Bank account number of endorser, if any.—If the reported activity involves instruments (*e.g.*, money orders or traveler's checks), and the endorser's bank account number (found on the reverse side of the instrument) can be determined, enter the account number.

Part II - Suspect Instrument/Funds Transfer Information

Item 21. Financial services involved in suspect transaction(s).—Check appropriate box(es) to indicate the type of financial service(s) involved in the suspect transaction(s) that the customer conducted or was attempting to conduct. If you check the box "d" for "**Other**", specify briefly (in two or three words) the type of services involved in the suspected activity which has occurred, but is not listed in Item 21 (*e.g.*, "check cashing"), and describe the character of such services in Part VII.

Item 22. Date or date range of suspicious activity.—Enter the date(s) of the reported activity. If only one date applies, enter this date in the **From field**. If the reported activity has occurred on more than one day, indicate the duration of the activity by entering the first date in the **From field** and the last date in the **To field**. Use the date format "mm/dd/yyyy" where "mm" is the month, "dd" is the day, and "yyyy" is the year.

Item 23. Total dollar amount involved in suspicious activity.—Enter the total dollar value involved in the reported activity. The total dollar value entered must be in the form of numbers. If less than a full dollar amount is involved, increase that figure to the next highest dollar. If the dollar amount cannot be determined or estimated, then enter zero (0). If multiple instruments (*e.g.*, money orders, traveler's checks) and/or funds transfer(s) are reported, enter the total dollar amount in Item 23. If more than one type of financial service is involved (*e.g.*, funds transfers, money orders, traveler's checks), list separately each financial service with its name and dollar value in Part VII.

Item 24. Serial number(s) of money order(s) or traveler's check(s).—If the suspicious activity reported involves a single instrument or a series of instruments with consecutive serial numbers (*e.g.*, money orders or traveler's checks), check the appropriate box for money order or traveler's check and enter in "a" the name of the issuer. Enter in "b" the serial number for each instrument involved in the reported activity, when the instruments are not consecutively numbered. In the case of instruments with consecutive serial numbers, enter the first number in the series in "b" (as the Starting No.) and the last number in the series in "c" (as the Ending No). Enter up to 12 non-consecutive serial numbers in part "b" or 12 sets of consecutive serial numbers in parts "b" and "c" in items 25.1 and 25.3 on page 1, and items 25.4 through 25.12 on page 4 (Continuation). If the suspicious activity involves 13 or more numbers or 13 or more sets of serial numbers, make as many copies of page 4 of the form as necessary, enter the additional serial numbers, and attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part V, part "a" may be left blank.

Item 25. Funds transfer number(s).—If the suspicious activity being reported involves a funds transfer number, enter in "a" the name of the funds transfer system. Enter in "b" the identifying number of each funds transfer involved in the reported activity. Enter up to 24 funds transfer numbers in Items 25.1 through 25.6 on pages 1 and 2 and Items 25.7 through 25.24 on page 4 (Continuation). If the suspicious activity involves 25 or more funds transfer numbers, make as many copies of page 4 of the form as necessary, enter the additional funds transfer numbers, and attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part V, part "a" may be left blank.

Item 26. Category of suspicious activity.—Check the box or boxes which best identify the suspicious activity. Check box "b" for **Structuring** when it appears that a person acting alone, or in conjunction with, or on behalf of other persons, conducts or attempts to conduct activity designed to evade any recordkeeping or reporting requirement promulgated under the Bank Secrecy Act. If you check box "d" for "**Other**", you must specify briefly (in three or four words) the type of suspicious activity which occurred, but which is not already listed in Item 27, and describe the character of such activity in Part VII. Box "d" should only be used if no other type of suspicious activity box adequately categorizes the transaction.

Item 27. Character of suspicious activity.—Check box "a" for unusual use of instruments (*e.g.*, money orders or traveler's checks) and/or check box "b" for unusual use of funds transfers. Check box(es) "(1), (2), (3), (4) (5), (6) and/or (7)" for each description that applies.

Part III - Transaction Location Information

Item 28. Multiple selling and/or paying business locations.—If the reported activity occurred at multiple selling and/or paying business locations, check the box, make as many copies of page 2 of the form as necessary, and provide the additional information in duplicate Part III. Attach the additional copies of page 2 to report the additional locations.

Item 29. Type of business location(s).—Check box "a" if this is the selling business location where the customer purchased a money order(s) or traveler's check(s) or initiated a funds transfer(s). Check box "b" if this is the paying business location where the customer cashed a money order(s) or traveler's check(s) or received payment of a funds transfer(s). Check box "c" if multiple transactions are reported and the business location functioned as the paying location for one or more transactions and as the selling location for one or more transactions.

Item 30. Legal name of business.—Enter the legal name of the business where the instrument(s) and/or funds transfer(s) was sold or paid. If there is more than one place of business where the instruments and/or funds transfers were

sold or paid, make as many copies of page 2 of the form as necessary, provide the additional information in duplicate copies of Part III. Attach the additional copies of page 2 to report the additional business selling or paying locations.

Item 31. Doing business as.—Enter the trade name by which the business is commonly known (if other than the legal name).

Items 32, 35, 36, 37 and 38. Permanent address.—Enter the permanent street address, city, two-letter state/territory abbreviation used by the U.S. Postal Service and Zip code of the business location where the activity occurred. For the Zip code, enter the first five digits beginning from the left. Include the last four digits of the Zip, if known. Do not enter a Post Office (P.O.) box number. If the business where the instrument/funds transfer was sold or paid is in a foreign country, enter the city, province or state, postal code and the name of the foreign country, if known. If the country is the United States, leave Item 38 BLANK.

Item 33. Taxpayer identification number (TIN).—If the business identified in Items 30 and 31 has an employer identification number (EIN), enter that number in Item 33. If not, enter in Item 33 the individual owner's social security number (SSN). Do not include any dashes or other substitutes.

Item 34. Business phone number.—Enter the telephone number including area code of the business location where the instrument or funds transfer was sold or paid.

Part IV - Law Enforcement Agency Information

Item 39. Has a law enforcement agency been contacted?—If the MSB has contacted any law enforcement agency about the suspicious activity, by telephone or written communication (*excluding submission of a* SAR-MSB), check box "a, b, c, d, e, f, g, h, i, or j" and complete Items 40 through 42. The acronyms used in Item 39 mean the following: "DEA" stands for the Drug Enforcement Administration, "FBI" Stands for the Federal Bureau of Investigation, and "IRS" stands for the Internal Revenue Service. If you check boxes "a, b, c, d, e or f", there is no need to complete box "k". If you check boxes "g, h, i, or j" for other federal, state, local or tribal agency, specify the agency name on the line provided in box "k". If you have not contacted any law enforcement agency go to Part V or Part VI, as appropriate.

Items 40, 41 and 42. Law enforcement contact person.—If the MSB has contacted law enforcement, identify the individual contacted by the telephone number and the date contacted in Items 40 through 42. Use the date format "mm/dd/yyyy" where "mm" is the month, "dd" is the day and "yyyy" is the year. If more than one law enforcement agency has been contacted, list additional information in Part VII. **Contact with law enforcement agencies does not eliminate the requirement to file the SAR-MSB.**

Part V - Reporting Business Information (if *different* from Location Information in Part III)

Complete Part V only if the reporting business is different from the business location described in Part III.

Item 43. Legal name of business.—Enter the legal name of the reporting business. The legal name should match the name shown on the charter or other legal document creating the business, and the name is identified with the business's established taxpayer identification number.

Item 44. Doing business as.—Enter the trade name by which the reporting business is commonly known (if other than the legal name).

Items 45, 47, 48, 49 and 50. Permanent address.—Enter the permanent street address, city, two-letter state/territory abbreviation used by the U.S. Postal Service and Zip code of the reporting business. For the Zip code, enter the first five digits beginning from the left. Include the last four digits of the Zip, if known. Do not enter a Post Office (P.O.) box number. If the address of the issuer is in a foreign country, enter the city, province or state, postal code and the name of the foreign country. If the country is the United States, leave Item 50 BLANK.

Item 46. Taxpayer identification number.—Enter the nine-digit taxpayer identification number, without any dashes or other substitutes, of the reporting business.

Part VI - Contact for Assistance

Items 51, 52 and 53. Contact's name.—Enter the name of the individual who may be contacted for additional information.

Item 54. Title/Position.—Enter the contact individual's job title or position.

Item 55. Work phone number.—Enter the contact individual's work telephone number including area code.

Item 56. Date prepared.—Enter the date the SAR-MSB form was prepared. Use the date format "mm/dd/yyyy" where "mm" is the month, "dd" is the day, and "yyyy" is the year.

Part VII - Suspicious Activity Information — Explanation/Description

This section of the report (Explanation/Description) is **critical**. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist in Part VII as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the MSB should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reporting.

If necessary, continue the description on additional pages attached to the SAR-MSB. The MSB must describe in Part VII any supporting documentation such as copies of instruments; receipts; sale, transaction or clearing records; spreadsheets; photographs; surveillance audio and/or video tapes, etc. and retain such documentation for **5 years**. ***DO NOT*** **include supporting documentation when filing this form.**

[FR Doc. 02–4622 Filed 2–26–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 939; ATF O 1130.28]

Delegation of the Director's Authorities in 27 CFR Parts 45 and 46

To: All Bureau Supervisors.

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to procedure and administration. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellations.* ATF O 1100.106A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 295, Tobacco Products for the United States, dated 4/5/84, and ATF O 1130.24, Delegation Order—Delegation of Certain of the Director's Authorities in Subparts C and I of 27 CFR part 296, dated 9/27/01, are canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Orders No. 120–01 (formerly 221), dated June 6, 1972, and 120–04 (formerly 221–4), dated December 5, 1978, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Parts 45 and 46 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR parts 45 and 46, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

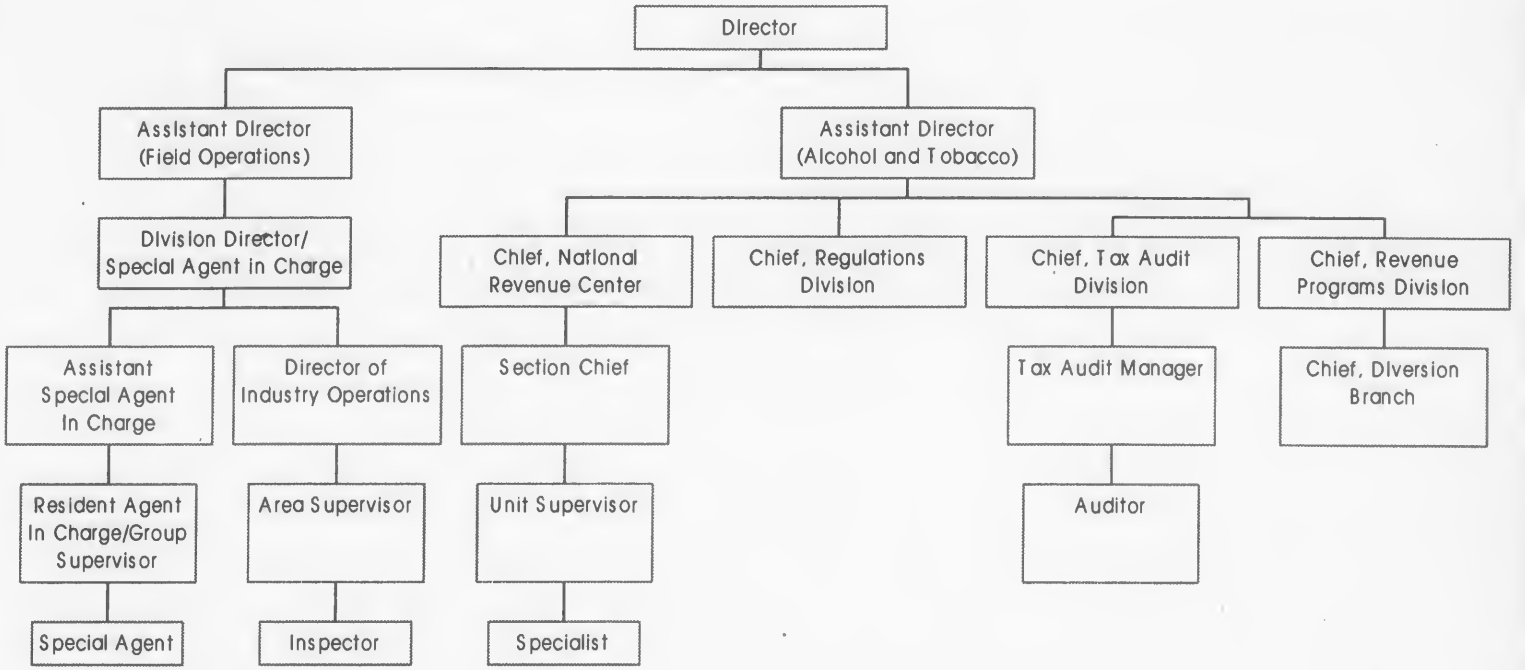
5. *Questions.* If you have questions about this order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

Regulatory section	Officer(s) authorized to act or receive document
§ 45.21	Chief, Regulations Division, except Chief, Diversion Branch, for removal of tobacco products, without payment of tax, from manufacturer for law enforcement investigations of the United States. If the alternate method or procedure does not affect import or export recordkeeping, Chief, National Revenue Center (NRC), may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§ 45.22	Director of Industry Operations to approve or withdraw. Area Supervisor to receive application.
§ 45.23	Inspector, Specialist, Auditor or Special Agent.
§ 45.24	Inspector, Specialist, Auditor or Special Agent.
§ 45.27	Chief, Regulations Division.
§ 45.34	Area Supervisor.
§ 45.36	Unit Supervisor, NRC.
§ 45.42	Chief, Regulations Division.
§ 45.51(d)	Inspector, Specialist, Auditor or Special Agent.
§ 46.5(c)	Unit Supervisor, NRC.
§ 46.7	Unit Supervisor, NRC.
§ 46.8	Unit Supervisor, NRC, or Area Supervisor.
§ 46.11(b)	Section Chief, NRC.
§ 46.13	Section Chief, NRC.
§ 46.14	Section Chief, NRC.
§ 46.15	Section Chief, NRC.
§ 46.22(a)	Chief, Regulations Division.
§ 46.73	Unit Supervisor to act on claims of $10,000 or less. Section Chief, NRC, to act on claims of more than $10,000 but not more than $100,000. Chief, NRC, to act on claims of more than $100,000.
§ 46.77	Unit Supervisor, NRC.
§ 46.78	Unit Supervisor to act on claims of $10,000 or less. Section Chief, NRC, to act on claims of more than $10,000 but not more than $100,000. Chief, NRC, to act on claims of more than $100,000.
§ 46.79	To determine if non-ATF supervision was satisfactory, Unit Supervisor if claim is $10,000 or less, Section Chief, NRC, if claim is more than $10,000 but not more than $100,000, or Chief, NRC, if claim more than $100,000. Area Supervisor to assign. Inspector, Specialist, Auditor or Special Agent to supervise.
§ 46.150(b) and (c)	Section Chief, NRC. upon recommendation of Area Supervisor, to approve. Unit Supervisor, NRC, with whom application is filed.
§ 46.153	Inspector, Specialist, Auditor or Special Agent.
§ 46.164	Inspector, Specialist, Auditor or Special Agent.
§ 46.165	Inspector, Specialist, Auditor or Special Agent.
§ 46.242	Director of Industry Operations.
§ 46.244	Inspector, Specialist, Auditor or Special Agent.
§ 46.263	Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§ 46.264	Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§ 46.271	Inspector, Specialist, Auditor or Special Agent.
§ 46.272	Director of Industry Operations.
§ 46.273	Inspector, Specialist, Auditor or Special Agent.

BILLING CODE 4810–31–P

ATF Organization



This is not a complete organizational chart of ATF.

[FR Doc. 02–4387 Filed 2–26–02; 8:45 am]
BILLING CODE 4810–31–C

Corrections

Federal Register
Vol. 67, No. 39
Wednesday, February 27, 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.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–17

[FTR Amendment 98]

RIN 3090–AG93

Federal Travel Regulation; Relocation Allowances

Correction

In correction document C1–27764 beginning on page 7219 in the issue of Friday, February 15, 2002, make the following correction:

§ 302–17.8 [Corrected]

1. On page 7219, in the third column, number 10. correction in § 302–17.8 should read as follows:

"10. On the same page, in the same column, the equation should read:

$$Z = \frac{.3903}{1.00-.3448}\ (\$21{,}800) - \frac{1.00-.3903}{1.00-.3448}\ (\$5{,}450)$$

Z= .5957($21,800) – .9306($5,450)

Z= $12,986.26 – $5,071.77

Z= $7,914.49"

[FR Doc. C1–27764 Filed 2–26–02; 8:45 am]

BILLING CODE 1505–01–D

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37 CFR Part 201

[Docket No. RM 2002–1]

Notice of Recordkeeping for Use of Sound Recordings Under Statutory License

Correction

In proposed rule document 02–2842 beginning on page 5761, in the issue of Thursday, February 7, 2002, make the following corrections:

1. On page 5761, in the first column, the docket number is corrected to read as set forth above.

2. On page 5766, in the first column, in paragraph (Q), in the fourth line, "(P)" should read, "℗".

3. On the same page, in the third column, in paragraph (4)((xii), in the fourth line "© (P))" should read, "℗".

[FR Doc. C2–2842 Filed 2–26–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 27, 2002

Part II

Department of Energy

Office of Civilian and Radioactive Waste Management; Nuclear Waste Repository Program: Yucca Mountain Site Recommendation to the President and Availability of Supporting Documents; Notice

DEPARTMENT OF ENERGY

Office of Civilian and Radioactive Waste Management; Nuclear Waste Repository Program: Yucca Mountain Site Recommendation to the President and Availability of Supporting Documents

AGENCY: Department of Energy, DOE.

ACTION: Notice, recommendation.

SUMMARY: On February 14, 2002, the Secretary of Energy recommended to the President that the Yucca Mountain site in the State of Nevada be approved for development as a geologic repository for spent nuclear fuel and high-level radioactive waste. DOE today publishes the text of the letter from the Secretary to the President and the *Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982*. DOE also announces the electronic and reading room availability of the documents that were forwarded to the President with the recommendation.

ADDRESSES: The documents are available through the Internet at *http://www.ymp.gov*, or may be inspected at the locations listed in Supplementary Information, below.

FOR FURTHER INFORMATION CONTACT: For further information contact: Yucca Mountain Site Characterization Office, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, M/S 025, P.O. Box 364629, North Las Vegas, NV 89036–8629, 1–800–225–6972.

SUPPLEMENTARY INFORMATION: On February 14, 2002, the Secretary sent a letter to the President that recommended development of Yucca Mountain as a repository for spent nuclear fuel and high-level radioactive waste, pursuant to section 114(a)(1) of the Nuclear Waste Policy Act (NWPA). This notice includes a copy of the Secretary's letter and the *Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982*. In conjunction with this recommendation, the Secretary submitted the following documents to the President:

- Letter to the President
- *Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982*
- *Yucca Mountain Science and Engineering Report (YMS&ER), Revision 1*
- The *Final Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*, along with letters received from the Secretary of the Interior, the Chair of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission (NRC), transmitting their respective comments on the final EIS
- Letter from NRC Chairman Meserve to Under Secretary Card, dated November 13, 2001
- *Comment Summary Document*
- *Supplemental Comment Summary Document*
- Responses to comments from the Governor of Nevada received after the close of the public comment period
- *Yucca Mountain Site Suitability Evaluation*
- Impact reports from the State of Nevada and various counties

The above documents are available on the Internet at www.ymp.gov and may be inspected at the locations listed below.

Public Reading Rooms

Inyo County—Contact: Andrew Remus; (760) 878–0263; Inyo County Yucca Mountain Repository Assessment Office; 168 North Edwards; Independence, CA 93526.

Oakland Operations Office—Contact: Judy Weiss; (510) 637–1762; U. S. Department of Energy Public Reading Room; EIC; 1301 Clay Street, Room 700N; Oakland, CA 94612–5208.

National Renewable Energy Laboratory—Contact: John Horst; (303) 275–4709; Public Reading Room; 1617 Cole Boulevard, Bldg 17–4; Golden, CO 80401.

Rocky Flats Public Reading Room—Contact: Gary Morell; (303) 469–4435; College Hill Library; 3705 West 112th Avenue; Westminster, CO 80030.

Headquarters Office—Contact: Carolyn Lawson; (202) 586–3142; U.S. Department of Energy; Room 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585.

Atlanta Support Office—Contact: Ron Henderson; (404) 562–0555; U.S. Department of Energy; Public Reading Room; 75 Spring Street, Suite 200; Atlanta, GA 30303.

Southeastern Power Administration—Contact: Joel W. Seymour; (706) 213–3810; U.S. Department of Energy; Public Reading Room; 1166 Athens Tech Road; Elberton, GA 30635–6711.

Boise State University Library—Contact: Elaine Watson; (208) 426–1737; Library -Government Documents; 1910 University Avenue; Boise, ID 83725–03992.

Idaho Operations Office—Contact: Brent Jacobson; (208) 526–1144; INEEL Technical Library, Public Reading Room; 1776 Science Center Drive, M/S 2300; Idaho Falls, ID 83402.

Chicago Operations Office—Contact: John Shuler; (312) 996–2738; Document Department; University of Illinois at Chicago; 801 South Morgan Street; Chicago, IL 60607.

Strategic Petroleum Reserve Project Management Office—Contact: Deanna Harvey; (504) 734–4316; U.S. Department of Energy; SPRPMO/SEB Reading Room; 850 Commerce Road, East; New Orleans, LA 70123.

Lander County—Contact: Mickey Yarbro; (775) 635–2885; 315 S. Humboldt Street, Battle Mountain, NV 89820.

Beatty Yucca Mountain Science Center—Contact: Marina Anderson; (775) 553–2130; 100 North E Avenue; Beatty, NV 89003.

Lincoln County—Contact: Lola Stark; (775) 726–3511; 100 Depot Avenue; Suite 15; Caliente, NV 89008.

Nevada State Clearinghouse—Contact: Heather Elliott; (775) 684–0209; Department of Administration; 209 E. Musser Street, Room 200; Carson City, NV 89701.

White Pine County—Contact: Josie Larson; (775) 289–2033; 959 Campton Street; Ely, NV 89301.

Eureka County—Contact: Leonard Fiorenzi; (775) 237–5372; 701 South Main; Eureka, NV 89316.

Churchill County—Contact: Alan Kalt; (775) 428–0212; 155 North Taylor Street, Suite 182; Fallon, NV 89046–2748.

Esmeralda County—Contact: George McCorkell; (775) 485–3419; Repository Oversight Program; 233 Crook Street; Goldfield, NV 89316.

Mineral County—Contact: Judy Shankle; (775) 945–2484; First & A Streets; Hawthorne, NV 89415.

Clark County—Contact: Irene Navis; (702) 455–5129; 500 South Grand Central Parkway, Suite 3012; Las Vegas, NV 89106.

Las Vegas, Nevada—Contact: Vickie Nozero; (702) 895–2100; University of Nevada Las Vegas; Lied Library; Government Publications; 4505 S. Maryland Parkway; Las Vegas, NV 89154–7013.

Las Vegas Yucca Mountain Science Center—Contact: Claire Whetsel; (702) 295–1312; 4101-B Meadows Lane; Las Vegas, NV 89107.

Nye County—Contact: Les W. Bradshaw; (775) 727–7727; Department

of Natural Resources and Federal Facilities; 1210 E. Basin Avenue, Suite 6; Pahrump, NV 89060.

Pahrump Yucca Mountain Science Center—Contact: John Pawlak; (775) 727–0896; 1141 South Highway 160, Suite 3; Pahrump NV, 89041.

Reno, Nevada—Contact: Duncan Aldrich; (775) 784–6500, Ext. 256; University of Nevada, Reno; The University of Nevada Libraries; Business and Government Information Center M/S 322; 1664 N. Virginia Street; Reno, NV 89557–0044.

Albuquerque Operations Office—Contact: Dave Baldwin; (505) 277–5441; U.S. DOE Contract Reading Room, University of New Mexico, Zimmerman Library; Albuquerque, NM 87131–1466.

Fernald Area Office—Contact: Diana Rayer; (513) 648–7480; U.S. Department of Energy; Public Information Room; 10995 Hamilton-Cleves Highway, M/S 78, Harrison OH 45030.

National Energy Technology Lab—Contact: Bernadette Ward; (918) 699–2033; U.S. Department of Energy; Williams Tower I, 1 West 3rd Street, Suite 1400, Tulsa, OK 74103.

Southwestern Power Administration—Contact: Marti Ayres; (918) 595–6609; U.S. Department of Energy; 1 West 3rd, Suite 1600; Tulsa, OK 74103.

Bonneville Power Administration—Contact: Bill Zimmerman; (503) 230–7334; U.S. Department of Energy; BPA–C–ACS–1; 905 NE 11th Street; Portland, OR 97232.

Pittsburgh Energy Technology Center—Contact: Ann C. Dunlap; (412) 386–6167; U.S. Department of Energy; Building 922/M210; Cochrans Mill Road; Pittsburgh, PA 15236–0940.

Savannah River Operations Office—Contact: Pauline Conner; (803) 725–1408; Gregg-Graniteville Library; University of South Carolina-Aiken; 171 University Parkway; Aiken, SC 29801.

University of South Carolina—Contact: William Suddeth; (803) 777–4841; Thomas Cooper Library; Documents/Microforms Department; Green and Sumter Streets; Columbia, SC 29208.

Oak Ridge Operations Office—Contact: Walter Perry; (865) 241–4780; U.S. Department of Energy; Public Reading Room; 230 Warehouse Road, Suite 300; Oak Ridge, TN 37831.

Southern Methodist University—Contact: Joseph Milazzo; (214) 768–2561; Fondren Library East; Government Information; 6414 Hilltop Lane, Room 102; Dallas, TX 75205.

University of Utah—Contact: Walter Jones; (801) 581–8863; Marriott Library Special Collections; 295 South 15th East; Salt Lake City, UT 84112–0860.

Richland Operations Center—Contact: Terri Traub; (509) 372–7443; U.S. Department of Energy; Public Reading Room; 2770 University Drive; Room 101L; Mailstop H2–53; Richland, WA 99352.

Dated: February 19, 2002.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

Appendix: Letter to the President and *Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982.*

February 14, 2002.
The President
The White House
Washington, DC 20500

Dear Mr. President: I am transmitting herewith, in accordance with section 114(a)(1) of the Nuclear Waste Policy Act of 1982 (the "Act"), 42 U.S.C. 10134, my recommendation for your approval of the Yucca Mountain site for the development of a nuclear waste repository, along with a comprehensive statement of the basis of my recommendation. In making this recommendation, I have examined three considerations.

First, and most important, I have considered whether sound science supports the determination that the Yucca Mountain site is scientifically and technically suitable for the development of a repository. I am convinced that it does. This suitability determination provides the indispensable foundation for my recommendation. Irrespective of any other considerations, I could not and would not recommend the Yucca Mountain site without having first determined that a repository at Yucca Mountain will bring together the location, natural barriers, and design elements necessary to protect the health and safety of the public, including those Americans living in the immediate vicinity, now and long into the future.

The Department has engaged in over 20 years of scientific and technical investigation of the suitability of the Yucca Mountain site. As part of this investigation, some of the world's best scientists have been examining every aspect of the natural processes—past, present and future—that could affect the ability of a repository beneath Yucca Mountain to isolate radionuclides emitted from any spent fuel and radioactive waste disposed there. They have been conducting equally searching investigations into the processes that could affect the behavior of the engineered barriers that are expected to contribute to successful isolation of radionuclides. These investigations have run the gamut, from mapping the geologic features of the site, to studying the repository rock, to investigating whether and how water moves through the Yucca Mountain site.

To give just a few examples, Yucca Mountain scientists have: mapped geologic structures, including rock units, faults, fractures, and volcanic features; excavated more than 200 pits and trenches to remove rocks and other material for direct observation; drilled more than 450 boreholes; collected over 75,000 feet of core, and some 18,000 geologic and water samples; constructed six and one-half miles of tunnels to provide access to the rocks that would be used for the repository; mapped the geologic features exposed by the underground openings in the tunnels; conducted the largest known test in history to simulate heat effects of a repository, heating some seven million cubic feet of rock over its ambient temperature; tested mechanical, chemical, and hydrologic properties of rock samples; and examined over 13,000 engineered material samples to determine their corrosion resistance in a variety of environments.

The findings from these and numerous other studies have been used to expand our knowledge of the rocks beneath Yucca Mountain and the flow of water through these rocks, including amounts, pathways, and rates. Yucca Mountain scientists have used this vast reservoir of information to develop computer simulations that describe the natural features, events and processes that exist at Yucca Mountain and, in turn, have used these descriptions to develop the models to forecast how a repository will perform far into the future. Yucca Mountain scientists have followed a deliberately cautious approach to enhance confidence in any prediction of future performance.

The results of this investigation have been openly and thoroughly reviewed by the Department and oversight entities such as the Nuclear Regulatory Commission (NRC), the Nuclear Waste Technical Review Board, and the U.S. Geological Survey, as well as having been subjected to scientific peer reviews, including a review undertaken by the International Atomic Energy Agency. The Department also has made available the scientific materials and analyses used to prepare the technical evaluations of site suitability for public review by all interested parties. The results of this extensive investigation and the external technical reviews of this body of scientific work give me confidence for the conclusion, based on sound scientific principles, that a repository at Yucca Mountain will be able to protect the health and safety of the public when evaluated against the radiological protection standards adopted by the Environmental Protection Agency and implemented by the NRC in accordance with Congressional direction in the Energy Policy Act of 1992.

Second, having found the site technically suitable, I am also convinced that there are compelling national interests that require development of a repository. In brief, the reasons are these:

- A repository is important to our national security. About 40% of our fleet's principal combat vessels, including submarines and aircraft carriers, are nuclear-powered. They must periodically be refueled and the spent fuel removed. This spent fuel is currently stored at surface facilities under temporary arrangements. A repository is necessary to assure a permanent disposition pathway for this material and thereby enhance the certainty of future naval operational capability.

• A repository is important to promote our non-proliferation objectives. The end of the Cold War has brought with it the welcome challenge of disposing of surplus weapons-grade plutonium as part of the process of decommissioning weapons we no longer need. A geological repository is an integral part of our disposition plans. Without it, our ability to meet our pledge to decommission our weapons could be placed in jeopardy, thereby jeopardizing the commitment of other nations, such as Russia, to decommission its own.

• A repository is important to our energy security. We must ensure that nuclear power, which provides 20% of the nation's electric power, remains an important part of our domestic energy production. Without the stabilizing effects of nuclear power, energy markets will become increasingly more exposed to price spikes and supply uncertainties, as we are forced to replace it with other energy sources to substitute for the almost five hours of electricity that nuclear power currently provides each day, on average, to each home, farm, factory and business in America. Nuclear power is also important to sustainable growth because it produces no controlled air pollutants, such as sulfur and particulates, or greenhouse gases. A repository at Yucca Mountain is indispensable to the maintenance and potential growth of this environmentally efficient source of energy.

• A repository is important to our homeland security. Spent nuclear fuel, high-level radioactive waste, and excess plutonium for which there is no complete disposal pathway without a repository are currently stored at over 131 sites in 39 States. More than 161 million Americans live within 75 miles of one or more of these sites. The facilities housing these materials were intended to do so on a temporary basis. They should be able to withstand current terrorist threats, but that may not remain the case in the future. These materials would be far better secured in a deep underground repository at Yucca Mountain, on federal land, far from population centers, that can withstand an attack well beyond any that is reasonably conceivable.

• And a repository is important to our efforts to protect the environment. It is past time for the federal government to implement an environmentally sound disposition plan for our defense wastes, which are located in Tennessee, Colorado, South Carolina, New Mexico, New York, Washington and Idaho. Among the wastes currently at these sites, approximately 100,000,000 gallons of high-level liquid waste are stored in, and in some instances have leaked from, temporary holding tanks. About 2,500 metric tons of solid un-reprocessed fuel from production and other reactors also are stored at these sites. It is also past time for the federal government to begin disposition of commercial spent fuel, a program that was to have begun in 1998. A repository is necessary for accomplishment of either of these objectives.

Third, I have considered carefully the primary arguments against locating a repository at Yucca Mountain. None of these arguments rises to a level that would outweigh the case for going forward. This is not to say that there have not been important concerns identified. I am confident, however, these concerns have been and will continue to be addressed in an appropriate manner.

In short, after months of study based on scientific and technical research unique in its scope and depth, and after reviewing the results of a public review process that went well beyond the requirements of the Act, I reached the conclusions described in the preceding paragraphs—namely, that technically and scientifically the Yucca Mountain site is fully suitable; that development of a repository at the Yucca Mountain site serves the national interest in numerous important ways; and that the arguments against its designation do not rise to a level that would outweigh the case for going forward. Not completing the site designation process and moving forward to licensing the development of a repository, as Congress mandated almost 20 years ago, would be an irresponsible dereliction of duty.

Accordingly, I recommend the Yucca Mountain site for the development of a nuclear waste repository.

Respectfully,
Spencer Abraham

Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982, February 2002

1. Introduction

For more than half a century, since nuclear science helped us win World War II and ring in the Atomic Age, scientists have known that the Nation would need a secure, permanent facility in which to dispose of radioactive wastes. Twenty years ago, when Congress adopted the Nuclear Waste Policy Act of 1982 (NWPA or "the Act"), it recognized the overwhelming consensus in the scientific community that the best option for such a facility would be a deep underground repository. Fifteen years ago, Congress directed the Secretary of Energy to investigate and recommend to the President whether such a repository could be located safely at Yucca Mountain, Nevada. Since then, our country has spent billions of dollars and millions of hours of research endeavoring to answer this question. I have carefully reviewed the product of this study. In my judgment, it constitutes sound science and shows that a safe repository can be sited there. I also believe that compelling national interests counsel in favor of proceeding with this project. Accordingly, consistent with my responsibilities under the NWPA, today I am recommending that Yucca Mountain be developed as the site for an underground repository for spent fuel and other radioactive wastes.[1]

The first consideration in my decision was whether the Yucca Mountain site will safeguard the health and safety of the people,

[1] For purposes of this Recommendation, the terms "radioactive waste" and "waste" are used to cover high-level radioactive waste and spent nuclear fuel, as those terms are used in the Nuclear Waste Policy Act.

in Nevada and across the country, and will be effective in containing at minimum risk the material it is designed to hold. Substantial evidence shows that it will. Yucca Mountain is far and away the most thoroughly researched site of its kind in the world. It is a geologically stable site, in a closed groundwater basin, isolated on thousands of acres of Federal land, and farther from any metropolitan area than the great majority of less secure, temporary nuclear waste storage sites that exist in the country today.

This point bears emphasis. We are not confronting a hypothetical problem. We have a staggering amount of radioactive waste in this country—nearly 100,000,000 gallons of high-level nuclear waste and more than 40,000 metric tons of spent nuclear fuel with more created every day. Our choice is not between, on the one hand, a disposal site with costs and risks held to a minimum, and, on the other, a magic disposal system with no costs or risks at all. Instead, the real choice is between a single secure site, deep under the ground at Yucca Mountain, or making do with what we have now or some variant of it—131 aging surface sites, scattered across 39 states. Every one of those sites was built on the assumption that it would be temporary. As time goes by, every one is closer to the limit of its safe life span. And every one is at least a potential security risk—safe for today, but a question mark in decades to come.

The Yucca Mountain facility is important to achieving a number of our national goals. It will promote our energy security, our national security, and safety in our homeland. It will help strengthen our economy and help us clean up the environment.

The benefits of nuclear power are with us every day. Twenty percent of our country's electricity comes from nuclear energy. To put it another way, the "average" home operates on nuclear-generated electricity for almost five hours a day. A government with a complacent, kick-the-can-down-the-road nuclear waste disposal policy will sooner or later have to ask its citizens which five hours of electricity they would care to do without.

Regions that produce steel, automobiles, and durable goods rely in particular on nuclear power, which reduces the air pollution associated with fossil fuels—greenhouse gases, solid particulate matter, smog, and acid rain. But environmental concerns extend further. Most commercial spent fuel storage facilities are near large populations centers; in fact, more than 161 million Americans live within 75 miles of these facilities. These storage sites also tend to be near rivers, lakes, and seacoasts. Should a radioactive release occur from one of these older, less robust facilities, it could contaminate any of 20 major waterways, including the Mississippi River. Over 30 million Americans are served by these potentially at-risk water sources.

Our national security interests are likewise at stake. Forty percent of our warships, including many of the most strategic vessels in our Navy, are powered by nuclear fuel, which eventually becomes spent fuel. At the same time, the end of the Cold War has brought the welcome challenge to our Nation of disposing of surplus weapons-grade plutonium as part of the process of decommissioning our nuclear weapons. Regardless of whether this material is turned into reactor fuel or otherwise treated, an underground repository is an indispensable component in any plan for its complete disposition. An affirmative decision on Yucca Mountain is also likely to affect other nations' weapons decommissioning, since their willingness to proceed will depend on being satisfied that we are doing so. Moving forward with the repository will contribute to our global efforts to stem the proliferation of nuclear weapons in other ways, since it will encourage nations with weaker controls over their own materials to follow a similar path of permanent, underground disposal, thereby making it more difficult for these materials to fall into the wrong hands. By moving forward with Yucca Mountain, we will show leadership, set out a roadmap, and encourage other nations to follow it.

There will be those who say the problem of nuclear waste disposal generally, and Yucca Mountain in particular, needs more study. In fact, both issues have been studied for more than twice the amount of time it took to plan and complete the moon landing. My Recommendation today is consistent with the conclusion of the National Research Council of the National Academy of Sciences—a conclusion reached, not last week or last month, but 12 years ago. The Council noted "a worldwide scientific consensus that deep geological disposal, the approach being followed by the United States, is the best option for disposing of high-level radioactive waste." [2] Likewise, a broad spectrum of experts agrees that we now have enough information, including more than 20 years of researching Yucca Mountain specifically, to support a conclusion that such a repository can be safely located there.[3]

Nonetheless, should this site designation ultimately become effective, considerable additional study lies ahead. Before an ounce of spent fuel or radioactive waste could be sent to Yucca Mountain, indeed even before construction of the permanent facilities for emplacement of waste could begin there, the Department of Energy (DOE or "the Department") will be required to submit an application to the independent Nuclear Regulatory Commission (NRC). There, DOE would be required to make its case through a formal review process that will include public hearings and is expected to last at least three years. Only after that, if the license were granted, could construction begin. The DOE would also have to obtain an additional operating license, supported by evidence that public health and safety will be preserved, before any waste could actually be received.

In short, even if the Yucca Mountain Recommendation were accepted today, an estimated minimum of eight more years lies ahead before the site would become operational.

We have seen decades of study, and properly so for a decision of this importance, one with significant consequences for so many of our citizens. As necessary, many more years of study will be undertaken. But it is past time to stop sacrificing that which is forward-looking and prudent on the altar of a status quo we know ultimately will fail us. The status quo is not the best we can do for our energy future, our national security, our economy, our environment, and safety—and we are less safe every day as the clock runs down on dozens of older, temporary sites.

I recommend the deep underground site at Yucca Mountain, Nevada, for development as our Nation's first permanent facility for disposing of high-level nuclear waste.

2. Background

2.1. History of the Yucca Mountain Project and the Nuclear Waste Policy Act

The need for a secure facility in which to dispose of radioactive wastes has been known in this country at least since World War II. As early as 1957, a National Academy of Sciences report to the Atomic Energy Commission suggested burying radioactive waste in geologic formations. Beginning in the 1970s, the United States and other countries evaluated many options for the safe and permanent disposal of radioactive waste, including deep seabed disposal, remote island siting, dry cask storage, disposal in the polar ice sheets, transmutation, and rocketing waste into orbit around the sun. After analyzing these options, disposal in a mined geologic repository emerged as the preferred long-term environmental solution for the management of these wastes.[4] Congress recognized this consensus 20 years ago when it passed the Nuclear Waste Policy Act of 1982.

In the Act, Congress created a Federal obligation to accept civilian spent nuclear fuel and dispose of it in a geologic facility. Congress also designated the agencies responsible for implementing this policy and specified their roles. The Department of Energy must characterize, site, design, build, and manage a Federal waste repository. The Environmental Protection Agency (EPA) must set the public health standards for it. The Nuclear Regulatory Commission must license its construction, operation, and closure.

The Department of Energy began studying Yucca Mountain almost a quarter century ago. Even before Congress adopted the NWPA, the Department had begun national site screening research as part of the National Waste Terminal Storage program, which included examination of Federal sites that

[2] Rethinking High-Level Radioactive Waste Disposal: A Position Statement of the Board on Radioactive Waste Management, Washington, D.C., National Academy Press, 1990.

[3] Letter and attached report, Charles G. Groat, Director, U.S. Geologic Survey, to Robert G. Card, October 4, 2001 (hereafter USGS Letter & Report); Letter and attached report, Hans Riotte, NEA–IAEA Joint Secretariat, to Lake H. Barrett, November 2, 2001 (hereafter NEA–IAEA Letter & Report); Letter, Charles V. Shank, Director, Lawrence Berkeley National Laboratory, to Spencer Abraham, September 6, 200 (hereafter Lawrence Berkeley National Laboratory Letter).

[4] Final Environmental Impact Statement for Management of Commercially Generated Radioactive Waste, DOE/EIS–0046, 1980.

had previously been used for defense-related activities and were already potentially contaminated. Yucca Mountain was one such location, on and adjacent to the Nevada Test Site, which was then under consideration. Work began on the Yucca Mountain site in 1978. When the NWPA was passed, the Department was studying more than 25 sites around the country as potential repositories. The Act provided for the siting and development of two; Yucca Mountain was one of nine sites under consideration for the first repository program.

Following the provisions of the Act and the Department's siting Guidelines,[5] the Department prepared draft environmental assessments for the nine sites. Final environmental assessments were prepared for five of these, including Yucca Mountain. In 1986, the Department compared and ranked the sites under consideration for characterization. It did this by using a multi-attribute methodology—an accepted, formal scientific method used to help decision makers compare, on an equivalent basis, the many components that make up a complex decision. When all the components of the ranking decision were considered together, taking account of both pre-closure and post-closure concerns, Yucca Mountain was the top-ranked site.[6] The Department examined a variety of ways of combining the components of the ranking scheme; this only confirmed the conclusion that Yucca Mountain came out in first place. The EPA also looked at the performance of a repository in unsaturated tuff. The EPA noted that in its modeling in support of development of the standards, unsaturated tuff was one of the two geologic media that appeared most capable of limiting releases of radionuclides in a manner that keeps expected doses to individuals low.[7]

In 1986, Secretary of Energy Herrington found three sites to be suitable for site characterization, and recommended the three, including Yucca Mountain, to President Reagan for detailed site characterization.[8] The Secretary also made a preliminary finding, based on Guidelines that did not require site characterization, that the three sites were suitable for development as repositories.[9]

The next year, Congress amended the NWPA, and selected Yucca Mountain as the single site to be characterized. It simultaneously directed the Department to cease activities at all other potential sites. Although it has been suggested that Congress's decision was made for purely political reasons, the record described above reveals that the Yucca Mountain site consistently ranked at or near the top of the sites evaluated well before Congress's action.

As previously noted, the National Research Council of the National Academy of Sciences concluded in 1990 (and reiterated last year) that there is "a worldwide scientific consensus that deep geological disposal, the approach being followed by the United States, is the best option for disposing of high-level radioactive waste."[10] Today, many national and international scientific experts and nuclear waste management professionals agree with DOE that there exists sufficient information to support a national decision on designation of the Yucca Mountain site.[11]

2.2. The Nuclear Waste Policy Act and the Responsibilities of the Department of Energy and the Secretary

Congress assigned to the Secretary of Energy the primary responsibility for implementing the national policy of developing a deep underground repository. The Secretary must determine whether to initiate the next step laid out in the NWPA—a recommendation to designate Yucca Mountain as the site for development as a permanent disposal facility. The criteria for this determination are described more fully in section 5. Briefly, I first must determine whether Yucca Mountain is in fact technically and scientifically suitable to be a repository. A favorable suitability determination is indispensable for a positive recommendation of the site to the President. Under additional criteria I have adopted above and beyond the statutory requirements, I have also sought to determine whether, when other relevant considerations are taken into account, recommending it is in the overall national interest and, if so, whether there are countervailing arguments so strong that I should nonetheless decline to make the Recommendation.

The Act contemplates several important stages in evaluating the site before a Secretarial recommendation is in order. It directs the Secretary to develop a site characterization plan, one that will help guide test programs for the collection of data to be used in evaluating the site. It directs the Secretary to conduct such characterization studies as may be necessary to evaluate the site's suitability. And it directs the Secretary to hold hearings in the vicinity of the prospective site to inform the residents and receive their comments. It is at the completion of these stages that the Act directs the Secretary, if he finds the site suitable, to determine whether to recommend it to the President for development as a permanent repository.

If the Secretary recommends to the President that Yucca Mountain be developed, he must include with the Recommendation, and make available to the public, a comprehensive statement of the basis for his determination.[12] If at any time the Secretary determines that Yucca Mountain is not a suitable site, he must report to Congress within six months his recommendations for further action to assure safe, permanent disposal of spent nuclear fuel and high-level radioactive waste.

Following a Recommendation by the Secretary, the President may recommend the Yucca Mountain site to Congress "if . . . [he] considers [it] qualified for application for a construction authorization * * *."[3] If the President submits a recommendation to Congress, he must also submit a copy of the statement setting forth the basis for the Secretary's Recommendation.

A Presidential recommendation takes effect 60 days after submission unless Nevada forwards a notice of disapproval to the Congress. If Nevada submits such a notice, Congress has a limited time during which it may nevertheless give effect to the President's recommendation by passing, under expedited procedures, a joint resolution of siting approval. If the President's recommendation takes effect, the Act directs the Secretary to submit to the NRC a construction license application.

The NWPA by its terms contemplated that the entire process of siting, licensing, and constructing a repository would have been completed more than four years ago, by January 31, 1998. Accordingly, it required the Department to enter into contracts to begin accepting waste for disposal by that date.

3. Decision

3.1. The Recommendation

After over 20 years of research and billions of dollars of carefully planned and reviewed scientific field work, the Department has found that a repository at Yucca Mountain brings together the location, natural barriers, and design elements most likely to protect the health and safety of the public, including those Americans living in the immediate vicinity, now and long into the future. It is therefore suitable, within the meaning of the NWPA, for development as a permanent nuclear waste and spent fuel repository.

After reviewing the extensive, indeed unprecedented, analysis the Department has undertaken, and in discharging the responsibilities made incumbent on the Secretary under the Act, I am recommending to the President that Yucca Mountain be developed as the Nation's first permanent, deep underground repository for high-level radioactive waste. A decision to develop Yucca Mountain will be a critical step forward in addressing our Nation's energy future, our national defense, our safety at home, and protection for our economy and environment.

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[5] The Guidelines then in force were promulgated at 10 CFR part 960, General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories, 1984.

[6] *Recommendation by the Secretary of Energy of Candidate Sites for Site Characterization for the First Radioactive Waste Repository,* DOE/S–0048, May 1986.

[7] Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, Final Rule, 40 CFR Part 191, December 20, 1993.

[8] Letter, John S. Herrington, Secretary of Energy, to President Ronald Reagan, May 27, 1986, with attached report, Recommendation by the Secretary of Energy of Candidate Sites for Site Characterization for the First Radioactive Waste Repository, DOE/S–0048, May 1986.

[9] *Ibid.*

[10] Rethinking High-Level Radioactive Waste Disposal: A Position Statement of the Board on Radioactive Waste Management, Washington, DC, National Academy Press, 1990. And: Disposition of High-Level Waste and Spent Nuclear Fuel: The Continuing Societal and Technical Challenges, Board on Radioactive Waste Management, Washington, DC, National Academy Press, 2001.

[11] USGS Letter & Report, supra; NEA–IAEA Letter & Report, supra; Lawrence Berkeley National Laboratory Letter, supra.

[12] This document together with accompanying materials comprises the recommendation and the comprehensive statement. The accompanying materials are described in footnote 26.

[3] NWPA section 114(a)(2)(A).

3.2. What This Recommendation Means, and What It Does Not Mean

Even after so many years of research, this Recommendation is a preliminary step. It does no more than start the formal safety evaluation process. Before a license is granted, much less before repository construction or waste emplacement may begin, many steps and many years still lie ahead. The DOE must submit an application for a construction license; defend it through formal review, including public hearings; and receive authorization from the NRC, which has the statutory responsibility to ensure that any repository built at Yucca Mountain meets stringent tests of health and safety. The NRC licensing process is expected to take a minimum of three years. Opposing viewpoints will have every opportunity to be heard. If the NRC grants this first license, it will only authorize initial construction. The DOE would then have to seek and obtain a second operating license from the NRC before any wastes could be received. The process altogether is expected to take a minimum of eight years.

The DOE would also be subject to NRC oversight as a condition of the operating license. Construction, licensing, and operation of the repository would also be subject to ongoing Congressional oversight.

At some future point, the repository is expected to close. EPA and NRC regulations require monitoring after the DOE receives a license amendment authorizing the closure, which would be from 50 to about 300 years after waste emplacement begins, or possibly longer. The repository would also be designed, however, to be able to adapt to methods future generations might develop to manage high-level radioactive waste. Thus, even after completion of waste emplacement, the waste could be retrieved to take advantage of its economic value or usefulness to as yet undeveloped technologies.

Permanently closing the repository would require sealing all shafts, ramps, exploratory boreholes, and other underground openings connected to the surface. Such sealing would discourage human intrusion and prevent water from entering through these openings. DOE's site stewardship would include maintaining control of the area, monitoring and testing, and implementing security measures against vandalism and theft. In addition, a network of permanent monuments and markers would be erected around the site to alert future generations to the presence and nature of the buried waste.[14] Detailed public records held in multiple places would identify the location and layout of the repository and the nature and potential hazard of the waste it contains. The Federal Government would maintain control of the site for the indefinite future. Active security systems would prevent deliberate or inadvertent human intrusion and any other human activity that could adversely affect the performance of the repository.

4. Decision Determination Methodology and the Decision-Making Process

I have considered many kinds of information in making my determination today. I have put on a hard hat, gone down into the Mountain, and spoken with many of the scientists and engineers working there. Of course my decision-making included a great deal more than that. I have also personally reviewed detailed summaries of the science and research undertaken by the Yucca Mountain Project since 1978. I relied upon review materials, program evaluations, and face-to-face briefings given by many individuals familiar with the Project, such as the acting program manager and program senior staff.

My consideration included: (a) the general background of the program, including the relevant legislative history; (b) the types, sources, and amounts of radioactive waste that would be disposed of at the site and their risk; (c) the extent of Federal responsibilities; (d) the criteria for a suitability decision, including the NWPA's provisions bearing on the basis for the Secretary's consideration; the regulatory structure, its substance, history, and issues; DOE's Yucca Mountain Suitability Guidelines promulgated under the NWPA;[15] the NRC licensing regulations,[16] and EPA radiation protection standards[17] as referenced in the Suitability Guidelines; (e) assessments of repository performance, including technical data and descriptions of how those data were gathered and evaluated; assessments of the effectiveness of natural and engineered barriers in meeting applicable radiation protection standards, and adjustments for uncertainties associated with each of these; (f) the Yucca Mountain Site Suitability Evaluation; (g) the views of members of the public, including those expressed at hearings and through written comments; (h) environmental, socioeconomic, and transportation issues; (i) program oversight history, technical issues, and responses, including the role and views of the NRC, the Nuclear Waste Technical Review Board, the General Accounting Office, the Inspector General, and the State of Nevada; and the role and views of the National Laboratories, the United States Geological Survey, and peer reviews; and (j) public policy impact.

I also requested an external review of program briefing materials. It was conducted by Dr. Chris Whipple, a member of the National Academy of Engineering and an experienced independent peer reviewer of programs for both the Waste Isolation Pilot Plant and the Yucca Mountain Project. Dr. Whipple previously had led a peer review team that critically analyzed Total System Performance Assessment (TSPA) work of the Yucca Mountain Project.

I also reviewed the comment summary documents from both the Environmental Impact Statement (EIS) and NWPA Section 114 site recommendation hearing process in order fully to take into account public views concerning a possible recommendation of the Yucca Mountain site. This review enabled me to evaluate scientific and research results in the context of both strongly held local concerns and issues of national importance. I took particular note of comments and concerns raised by the Governor of Nevada, governors of other states, state agencies, Native American tribes, and members of the public at large.

5. Decision Criteria

My charge to make a recommendation to the President on this matter stems from the Nuclear Waste Policy Act of 1982. That statute directs the Secretary of Energy to determine "whether to recommend to the President that he approve [the Yucca Mountain] site for development of a repository."[18] The NWPA establishes certain guideposts along the way to making this determination, but it also gives the Secretary significant responsibility for deciding what the relevant considerations are to be.

Pursuant to that responsibility, I concluded that I should use three criteria in determining whether to recommend approval of the Yucca Mountain Project. First, is Yucca Mountain a scientifically and technically suitable site for a repository, *i.e.*, a site that promises a reasonable expectation of public health and safety for disposal of spent nuclear fuel and high-level radioactive waste for the next 10,000 years? Second, are there compelling national interests that favor proceeding with the decision to site a repository there? And third, are there countervailing considerations that outweigh those interests?

The first of these criteria is expressly contemplated by the NWPA, although the NWPA also confers considerable discretion and responsibility on the Secretary in defining how to determine scientific and technical suitability and in making a judgment on the question. The two other criteria are not specified by the NWPA, but I am convinced that they are appropriate checks on a pure suitability-based decision.

5.1. Scientific and Technical Suitability

Under the NWPA, the first step in a Secretarial determination regarding Yucca Mountain is deciding whether it is scientifically and technically suitable as a repository site. Although the NWPA does not state explicitly that this is the initial step, the language and structure of the Act strongly suggest that this is so. Most significantly, section 114(a)(1) of the NWPA states that the Secretary's recommendation is to be made at the conclusion of site characterization.[19] Section 113, in turn, makes clear that the function of site characterization is to provide enough site-specific information to allow a decision on Yucca Mountain's scientific suitability.[20]

[14] During characterization of the Yucca Mountain site, Nye County began to develop its Early Warning Monitoring program and boreholes. These boreholes not only provide information about water movement in the area of the site, but also can serve as monitoring points should a repository be built at Yucca Mountain.

[15] 10 CFR Part 963, Yucca Mountain Site Suitability Guidelines, November 14, 2001.

[16] 10 CFR Part 63, Disposal of High-Level Radioactive Waste in a Geologic Repository at Yucca Mountain, Nevada, November 2, 2001.

[17] 40 CFR Part 197, Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada, June 13, 2001.

[18] NWPA section 114(a)(1).

[19] Ibid.

[20] This is apparent from two related provisions of section 113: section 113(c)(1), which states that,

Continued

As to what a determination of site suitability entails, the only real guidance the Act provides is that in several places it equates a favorable suitability judgment with a judgment that a repository could (1) be built at that site and (2) receive a construction authorization from the NRC.[21] This suggests that a determination that the site is suitable entails a judgment on my part that a repository at Yucca Mountain would likely be licensable by the NRC.

Beyond that, the NWPA largely leaves the question to the Secretary of Energy by charging him with establishing "criteria to be used to determine the suitability of * * * candidate site[s] for the location of a repository."[22] On November 14, 2001, following NRC's concurrence, the Department issued its final version of these criteria in a rule entitled, "Yucca Mountain Site Suitability Guidelines." I shall describe these in detail in the next section of this Recommendation, but outline them here. In brief, DOE's Guidelines envision that I may find the Yucca Mountain site suitable if I conclude that a repository constructed there is "likely" to meet extremely stringent radiation protection standards designed to protect public health and safety.[23] The EPA originally established these standards.[24] They are now also set out in NRC licensing rules.[25]

The EPA and NRC adopted the standards so as to assure that while the repository is receiving nuclear materials, any radiation doses to workers and members of the public in the vicinity of the site would be at safe levels, and that after the repository is sealed, radiation doses to those in the vicinity would be at safe levels for 10,000 years. These radiation protection levels are identical to those with which the DOE will have to demonstrate compliance to the satisfaction of the NRC in order to obtain a license to build the repository.

Using the Department's suitability Guidelines, I have concluded that Yucca Mountain is in fact suitable for a repository. The reasons for this conclusion are set out in section 7 of this Recommendation. However, I want to pause to make one thing clear at the outset. If for any reason I found that the site were not suitable or licensable, then, irrespective of any other consideration, I would not recommend it. Specifically, however much as I might believe that proceeding toward a repository would advance the national interest in other ways, those additional considerations could not properly influence, and have not influenced, my determination of suitability.

5.2. National Interest Considerations

Beyond scientific suitability, the NWPA is virtually silent on what other standard or standards the Secretary should apply in making a recommendation. It does direct me to consider certain matters. It requires that I consider the record of hearings conducted in the vicinity of Yucca Mountain, the site characterization record, and various other information I am directed to transmit to the President with my Recommendation.[26] The Act does not, however, specify how I am to consider these various items or what standard I am to use in weighing them. And finally among the items it directs me to take into account is, "such other information as the Secretary considers appropriate."

The approach taken in the Act led me to conclude that, after completing the first step of reaching a judgment as to the scientific suitability of Yucca Mountain, if I concluded the site was scientifically suitable, I should also address a second matter: whether it is in the overall national interest to build a repository there. In considering that issue, I have addressed two further questions: are there compelling national interests favoring development of the site, and if so, are there countervailing considerations weighty enough to overcome the arguments for proceeding with development? Sections 8 and 9 of this Recommendation set forth my conclusions on these questions.

In my view, the statute's silence on the factors that go into the recommendation process makes it at a minimum ambiguous on whether I should conduct any inquiry beyond the question of scientific suitability. In light of that ambiguity, I have elected to construe the statute as allowing me, if I make a favorable suitability determination based on science, also to consider whether development of a repository at Yucca Mountain is in the national interest. For several reasons, I believe this is the better way to interpret the NWPA. First, given the

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"The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site" (as well as for NEPA purposes); and its companion provision, section 113(c)(3), which states that, "If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall * * * terminate all site characterization activities [there]."

[21] NWPA section 112(b)(1)(D)(ii); NWPA section 113(c)(1); NWPA section 113(c)(3).

[22] NWPA section 113(b)(1)(A)(iv). That section contemplates that these criteria are to be included in the first instance in the site characterization plan for each site and thereafter may be modified using the procedures of section 112(a).

[23] 10 CFR part 963.

[24] 40 CFR part 197.

[25] 10 CFR part 63.

[26] The statutorily required information is set out in Section 114(a)(1) of the NWPA, which states:

Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) A description of the proposed repository, including preliminary engineering specifications for the facility;

(B) A description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) A discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) A final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*], together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) Preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) The views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) Such other information as the Secretary considers appropriate; and

(H) Any impact report submitted under section 116(c)(2)(B) [42 U.S.C. 10136(c)(2)(B)] by the State of Nevada.

This material is attached to this Recommendation, as follows:

- The description of the repository called for by section 114(a)(1)(A) is contained in Chapter 2 of the Yucca Mountain Science and Engineering Report (YMS&ER), Revision 1.
- The material relating to the waste form called for by section 114(a)(1)(B) is contained in Chapters 3 and 4 of the YMS&ER, Revision 1.
- The discussion of site characterization data called for by section 114(a)(1)(C) is contained in Chapter 4 of the YMS&ER, Revision 1.
- The EIS-related material called for by section 114(a)(1)(D) is contained in the Final Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, along with letters received from the Secretary of the Interior, the Chair of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission (NRC), transmitting their respective comments on the final EIS.
- The information called for by section 114(a)(1)(E) is contained in a letter from NRC Chairman Meserve to Under Secretary Card, dated November 13, 2001.
- The information called for by section 114(a)(1)(F) is contained in Section 2 of two separate reports, the Comment Summary Document and the Supplemental Comment Summary Document, and in a separate document providing responses to comments from the Governor of Nevada sent to the Department after the public comment periods on a possible site recommendation closed.
- Section 114(a)(1)(G) provides for the inclusion of other information as the Secretary considers appropriate. The report, Yucca Mountain Site Suitability Evaluation (DOE/RW–0549, February 2002), has been included as other information. This report provides an evaluation of the suitability of the Yucca Mountain site against Departmental Guidelines setting forth the criteria and methodology to be used in determining the suitability of the Yucca Mountain site, pursuant to section 113(b)(1)(A)(iv). In addition, impact reports submitted by the various Nevada counties have been included as other information to be forwarded to the President. In transmitting these reports to the President, the Department is neither deciding on, nor endorsing, any specific impact assistance requested by the governmental entities in those reports.
- The State of Nevada submitted an impact report pursuant to section 114(a)(1)(H). In transmitting this report to the President, the Department is likewise neither deciding on, nor endorsing this report.

significance of a siting decision and the nature of the officers involved, one would expect that even if a Cabinet Secretary were to find a site technically suitable for a repository, he should be able to take broader considerations into account in determining what recommendation to make to the President. A pure suitability-based decision risks taking insufficient heed of the views of the people, particularly in Nevada but in other parts of the country as well. Second, it is difficult to envision a Cabinet Secretary's making a recommendation without taking into account these broader considerations. Finally, it is plain that any conclusion on whether to recommend this site is likely to be reviewed by Congress. Since that review will inevitably focus on broader questions than the scientific and technical suitability of the site, it seems useful in the first instance for the Executive Branch to factor such considerations into its recommendation as well. I note, however, that if my interpretation of the statute in this regard is incorrect, and Congress has made a finding of suitability the sole determinant of whether to recommend Yucca Mountain, my Recommendation would be the same.

6. Is Yucca Mountain Scientifically and Technically Suitable for Development of a Repository?

The Department of Energy has spent over two decades and billions of dollars on carefully planned and reviewed scientific fieldwork designed to help determine whether Yucca Mountain is a suitable site for a repository. The results of that work are summarized in the Yucca Mountain Science and Engineering Report, Revision 1, and evaluated in the Yucca Mountain Site Suitability Evaluation (YMSSE), which concludes, as set out in 10 CFR part 963, that Yucca Mountain is "likely" to meet the applicable radiation standards and thus to protect the health and safety of the public, including those living in the immediate vicinity now and thousands of years from now. I have carefully studied that evaluation and much of the material underlying it, and I believe it to be correct.

6.1. Framework for Suitability Determination

6.1.1. General Outline

The general outline of the analytic framework I have used to evaluate the scientific suitability of the site is set out in the Department's Yucca Mountain Site Suitability Guidelines, found at 10 CFR part 963.

The framework has three key features. First, the Guidelines divide the suitability inquiry into sub-inquiries concerning a "pre-closure" safety evaluation and a "post-closure" performance evaluation. The "pre-closure" evaluation involves assessing whether a repository at the site is likely to be able to operate safely while it is open and receiving wastes. The "post-closure" evaluation involves assessing whether the repository is likely to continue to isolate the materials for 10,000 years after it has been sealed, so as to prevent harmful releases of radionuclides.

Second, the Guidelines set out a method and criteria for conducting the pre-closure safety evaluation. The method is essentially the same as that used to evaluate the safety of other proposed nuclear facilities; it is not particularly novel and should be recognized by those familiar with safety assessments of existing facilities. This is because, while it is open and receiving nuclear materials, a repository at Yucca Mountain will not be very different, in terms of its functions and the activities expected to take place there, from many other modern facilities built to handle such materials. A pre-closure evaluation to assess the probable safety of such a facility entails considering its design, the nature of the substances it handles, and the kinds of activities and external events that might occur while it is receiving waste. It then uses known data to forecast the level of radioactivity to which workers and members of the public would be likely to be exposed as a result.

Third, the Guidelines set out a method and criteria for evaluating the post-closure performance of the repository. This is the most challenging aspect of evaluating Yucca Mountain's suitability, since it entails assessing the ability of the repository to isolate radioactive materials far into the future. The scientific consensus is, and the Guidelines specify, that this should be done using a "Total System Performance Assessment." This approach, which is similar to other efforts to forecast the behavior of complex systems over long periods of time, takes information derived from a multitude of experiments and known facts. It feeds that information into a series of models. These in turn are used to develop one overarching model of how well a repository at Yucca Mountain would be likely to perform in preventing the escape of radioactivity and radioactive materials. The model can then be used to forecast the levels of radioactivity to which people near the repository might be exposed 10,000 years or more after the repository is sealed.[27]

[27] The selection of the 10,000-year compliance period for the individual-protection standard involves both technical and policy considerations. EPA weighed both during the rulemaking for 40 CFR Part 197. EPA considered policy and technical factors, as well as the experience of other EPA and international programs. First, EPA evaluated the policies for managing risks from the disposal of both long lived, hazardous, nonradioactive materials and radioactive materials. Second, EPA evaluated consistency with both 40 CFR Part 191 and the issue of consistent time periods for the protection of groundwater resources and public health. Third, EPA considered the issue of uncertainty in predicting dose over the very long periods contemplated in the alternative of peak dose within the period of geologic stability. Finally, EPA reviewed the feasibility of implementing the alternative of peak risk within the period of geologic stability.

As a result of these considerations, EPA established a 10,000-year compliance period with a quantitative limit and a requirement to calculate the peak dose, using performance assessments, if the peak dose occurs after 10,000 years. Under this approach, DOE must make the performance assessment results for the post-10,000–year period part of the public record by including them in the EIS for Yucca Mountain.

The relevance of a 10,000–year compliance period can also be understood by examining hazard indices that compare the potential risk of released radionuclides to other risks. One such analysis, presented in the Final Environmental Impact Statement for the Management of Commercially Generated Radioactive Waste, DOE/EIS–0046F, examined the relative amounts of water required to bring the concentration of a substance to allowable drinking water standards. The relative hazard for spent fuel compared to the toxicity of the ore used to produce the reactor fuel at one year after removal of the spent fuel from the reactor is about the same hazard as a rich mercury ore. The hazard index is about the same as average mercury ores at about 80 years. By 200 years the hazard index is about the same as average lead ore; by 1,000 years it is comparable to a silver ore. The relative hazard index is about the same as the uranium ore that it came from at 10,000 years. This is not to suggest that the wastes from spent fuel are not toxic. However, it is suggested that where concern for the toxicity of the ore bodies is not great, the spent fuel should cause no greater concern, particularly if placed within multiple engineered barriers in geologic formations, at least as, if not more, remote from the biosphere than these common ores.

6.1.2. Radiation Protection Standards

A key question to be answered, as part of any suitability determination is, "What level of radiation exposure is acceptable?"

DOE's Site Suitability Guidelines use as their benchmark the levels the NRC has specified for purposes of deciding whether to license a repository at Yucca Mountain. The NRC, in turn, established these levels on the basis of radiation protection standards set by the EPA. The standards generally require that during pre-closure, the repository facilities, operations, and controls restrict radiation doses to less than 15 millirem a year[28] to a member of the public in its vicinity.[29] During post-closure, they generally require that the maximum radiation dose allowed to someone living in the vicinity of Yucca Mountain be no more than 15 millirem per year, and no

[28] Risk to human beings from radiation is due to its ionizing effects. Radionuclides found in nature, commercial products, and nuclear waste emit ionizing radiation. The forms of ionizing radiation differ in their penetrating power or energy and in the manner in which they affect human tissue. Some ionizing radiation, known as alpha radiation, can be stopped by a sheet of paper, but may be very harmful if inhaled, ingested or otherwise admitted into the body. Long-lived radioactive elements, with atomic numbers higher than 92, such as plutonium, emit alpha radiation. Other ionizing radiation, known as beta radiation, can penetrate the skin and can cause serious effects if emitted from an inhaled or ingested radionuclide. The ionizing radiation with the greatest penetrating power is gamma radiation; it can penetrate and damage critical organs in the body. Fission products can emit both gamma and beta radiation depending on the radionuclides present. In high-level nuclear waste, beta and gamma radiation emitters, such as cesium and strontium, present the greatest hazard for the first 300 to 1,000 years, by which time they have decayed. After that time, the alpha-emitting radionuclides present the greatest hazard. Radiation doses can be correlated to potential biologic effects and are measured in a unit called a rem. Doses are often expressed in terms of thousandths of a rem, or millirem (mrem); the internationally used unit is the Sievert (S), which is equivalent to 100 rem.

[29] The NRC regulations also require that the annual dose to workers there be less than 5 rem. See 10 CFR part 63, referencing 10 CFR part 20. This is the general standard for occupational exposure that applies in numerous other settings, such as operating nuclear facilities.

more than four millirem per year from certain radionuclides in the groundwater.[30]

This level of radiation exposure is comparable to, or less than, ordinary variations in natural background radiation that people typically experience each year. It is also less than radiation levels to which Americans are exposed in the course of their everyday lives—in other words, radiation "doses" to which people generally give no thought at all.

To understand this, it is important to remember that radiation is part of the natural world and that we are exposed to it all the time. Every day we encounter radiation from space in the form of cosmic rays. Every day we are also exposed to terrestrial radiation, emitted from naturally radioactive substances in the earth's surface.

In addition to natural background radiation from these sources, people are exposed to radiation from other everyday sources. These include X-rays and other medical procedures, and consumer goods (*e.g.*, television sets and smoke detectors).

Americans, on average, receive an annual radiation exposure of 360 millirem from their surroundings. The 15 millirem dose the EPA standard set as the acceptable annual exposure from the repository is thus slightly over four percent of what we receive every year right now.

Moreover, background radiation varies from one location to another due to many natural and man-made factors. At higher elevations, the atmosphere provides less protection from cosmic rays, so background radiation is higher. In the United States, this variation can be 50 or more millirem. Thus, if the repository generates radiation doses set as the benchmark in the Guidelines, the incremental radiation dose a person living in the vicinity of Yucca Mountain would receive from it would be about the same level of increase in radiation exposure as a person would experience as a result of moving from Philadelphia to Denver.

Ordinary air travel is another example. Flying at typical cross-country altitudes results in increased exposure of about one-half millirem per hour. If the Yucca Mountain repository generates radiation at the 15 millirem benchmark, it would increase the exposure of those living near it to about the same extent as if they took three round trip flights between the East Coast and Las Vegas.

Rocks and soil also affect natural background radiation, particularly if the rocks are igneous or the soils derived from igneous rock, which can contain radioactive potassium, thorium, or uranium. In these cases, the variation in the background radiation is frequently in the tens of millirem or higher. Wood contains virtually no naturally occurring radioactive substances that contribute to radiation exposures, but bricks and concrete made from crushed rock and soils often do. Living or working in structures made from these materials can also result in tens of millirem of increased exposure to radiation. Thus, if the repository generates radiation at the levels in the Guidelines' benchmark, it is likely to result in less additional exposure to a person living in its vicinity than if he moved from a wood house to a brick house.

Finally, it is noteworthy that the radiation protection standards referenced by the Guidelines are based on those selected by the NRC for licensing the repository. They in turn relied on the EPA rule establishing these as the appropriate standards for the site. The NRC and EPA acted pursuant to specific directives in the NWPA, in which Congress first assigned to the EPA the responsibility to set these standards, and later in the Energy Policy Act of 1992, which directed the EPA to act in conjunction with the National Academy of Sciences and develop a standard specifically for Yucca Mountain. The EPA carefully considered the question of how to do so. The 15 millirem per year standard is the same it has applied to the Waste Isolation Pilot Plant in New Mexico.[31] And it is well within the National Academy of Sciences-recommended range, a range developed in part by referring to guidelines from national and international advisory bodies and regulations in other developed countries.[32]

For all these reasons, there is every cause to believe that a repository that can meet the 15 millirem radiation protection standard will be fully protective of the health and safety of residents living in the vicinity of the repository.[33]

6.1.3. Underlying Hard Science

As explained in section 6.1.1, the Guidelines contemplate the use of models and analyses to project whether the repository will meet the 15 millirem dose standard.[34] To have confidence in the model results, however, it is important to understand the kind of science that went into constructing them.

For over 20 years, scientists have been investigating every aspect of the natural processes—past, present and future—that could affect the ability of a repository beneath Yucca Mountain to isolate radionuclides emitted from nuclear materials emplaced there. They have been conducting equally searching investigations into the processes that would allow them to understand the behavior of the engineered barriers—principally the waste "packages" (more nearly akin to vaults)—that are expected to contribute to successful waste isolation. These investigations have run the gamut, from mapping the geological features of the site, to studying the repository rock, to investigating whether and how water moves through the Mountain. To give just a few examples:

At the Surface of the Repository

- Yucca Mountain scientists have mapped geologic structures, including rock units, faults, fractures, and volcanic features. To do this, they have excavated more than 200 pits and trenches to remove alluvial material or weathered rock to be able to observe surface and near-surface features directly, as well as to understand what events and processes have occurred or might occur at the Mountain.
- They have drilled more than 450 surface boreholes and collected over 75,000 feet of geologic core samples and some 18,000 geologic and water samples. They used the information obtained to identify rock and other formations beneath the surface, monitor infiltration of moisture, measure the depth of the water table and properties of the hydrologic system, observe the rate at which water moves from the surface into subsurface rock, and determine air and water movement properties above the water table.
- They have conducted aquifer testing at sets of wells to determine the transport and other properties of the saturated zone below Yucca Mountain. These tests included injecting easily identified groundwater tracers in one well, which were then detected in another; this helped scientists understand how fast water moves.
- They have conducted tectonic field studies to evaluate extensions of the earth's crust and the probability of seismic events near Yucca Mountain.

Underground

The Department's scientists have conducted a massive project to probe the area under the Mountain's surface where the repository will be built.

- They constructed a five mile-long main underground tunnel, the Exploratory Studies Facility, to provide access to the specific rock type that would be used for the repository. This main tunnel is adjacent to the proposed repository block, about 800 feet underground. After completing the main tunnel, they excavated a second tunnel, 1.6-miles long and 16.5 feet in diameter. This tunnel, referred to as the Cross-Drift tunnel, runs about 45 feet above and across the repository block.
- They then mapped the geologic features such as faults, fractures, stratigraphic units, mineral compositions, etc., exposed by the underground openings in the tunnels.
- They collected rock samples to determine geotechnical properties.
- They conducted a drift-scale thermal test to observe the effects of heat on the hydrologic, mechanical, and chemical properties of the rock, and chemical properties of the water and gas liberated as a result of heating. The four yearlong heating cycle of the drift-scale test was the largest known heater test in history, heating some seven million cubic feet of rock over its

[30] During both pre- and post-closure, the NRC licensing rules, 10 CFR part 63, also contain a number of more particularized standards for specific situations. These are referenced in the results tables contained in the following sections. Pursuant to EPA's groundwater standard, 40 CFR part 197, they also contain concentration limits on certain kinds of radionuclides that may be present in the water, whether or not their presence is attributable to a potential repository. These are also referenced in the results tables.

[31] 40 CFR part 191.

[32] Technical Bases for Yucca Mountain Standards, National Academy of Sciences, National Research Council, 1995.

[33] As noted above, the EPA, in 40 CFR part 197, also established groundwater protection standards in the Yucca Mountain rule; these are compatible with drinking water standards applied elsewhere in the United States, and apply maximum contaminant levels, as well as a 4 mrem/yr dose standard.

[34] As well, of course, as the other radiation protection standards such as the groundwater standard.

ambient temperature. This test also included samples of engineered materials to determine corrosion resistance in simulated repository conditions.

In Various Laboratory-Based Studies

Yucca Mountain scientists have supplemented with laboratory work the surface and underground tests previously described.

- They have tested mechanical, chemical, and hydrologic properties of rock samples in support of repository design and development of natural process models.
- They have tested radionuclides to determine solubility and colloid formation that affect their transport if released.
- They have tested over 13,000 engineered material samples to determine their corrosion resistance in a variety of environments.
- They have determined the chemical properties of water samples and the effects of heat on the behavior and properties of water in the host rock.

The findings from these numerous studies were used to develop computer simulations that describe the natural features, events, and processes that exist at Yucca Mountain or that could be changed as the result of waste disposal. The descriptions in turn were used to develop the models discussed in the next section to project the likely radiation doses from the repository.

7. Results of Suitability Evaluations and Conclusions

As explained above, the Guidelines contemplate that the Secretary will evaluate the suitability of the Yucca Mountain site for a repository on two separate bases.

The Guidelines first contemplate that I will determine whether the site is suitable for a repository during the entire pre-closure or operational period, assumed to be from 50 to 300 years after emplacement of nuclear materials begins. To answer this question, the Guidelines ask me to determine whether, while it is operating, the repository is likely to result in annual radiation doses to people in the vicinity and those working there that will fall below the dosage levels set in the radiation protection standards.[35] The Guidelines contemplate that I will use a pre-closure safety evaluation to guide my response.[36]

Second, the Guidelines contemplate that I will determine whether the repository is suitable " in other words, may reasonably be expected to be safe " after it has been sealed. To answer that question, the Guidelines ask me to determine whether it is likely that the repository will continue to isolate radionuclides for 10,000 years after it is sealed, so that an individual living 18 kilometers (11 miles) from the repository is not exposed to annual radiation doses above those set in the radiation protection standards.[37] The Guidelines contemplate that I will use a Total System Performance Assessment to guide my response to this question.[38]

The Department has completed both the Pre-Closure Safety Evaluation and TSPA called for by the Guidelines. These project that a repository at Yucca Mountain will result in radioactive doses well below the applicable radiation protection standards. As I explain below, I have reviewed these projections and the bases for them, and I believe them to be well founded. I also believe both the Pre-Closure Safety Evaluation and the Total System Performance Assessment have properly considered the criteria set out in the Guidelines for each period. Using these evaluations as set out in the Guidelines,[39] I believe it is likely that a repository at Yucca Mountain will result in radiation doses below the radiation protection standards for both periods. Accordingly, I believe Yucca Mountain is suitable for the development of a repository.

7.1. Results of Pre-Closure Evaluations

As explained in section 6.1.1, the Pre-Closure Safety Evaluation method I have employed is commonly used to assess the likely performance of planned or prospective nuclear facilities. Essentially what it involves is evaluating whether the contemplated facility is designed to prevent or mitigate the effects of possible accidents. The facility will be considered safe if its design is likely to result in radioactive releases below those set in the radiation protection standards.

The Department has conducted such a Pre-Closure Safety Evaluation, which is summarized in the *Yucca Mountain Science and Engineering Report, Revision 1.*[40] In conducting this evaluation, the Department considered descriptions of how the site will be laid out, the surface facilities, and the underground facilities and their operations. It also considered a series of potential hazards, including, for example, seismic activity, flooding, and severe winds, and their consequences. Finally, it considered preliminary descriptions of how components of the facilities' design would prevent or mitigate the effects of accidents.

The Pre-Closure Safety Evaluation concluded that the preliminary design would prevent or dramatically mitigate the effects of accidents, and that the repository would therefore not result in radioactive releases that would lead to exposure levels above those set by the radiation protection standards. It considered the pre-closure criteria of 10 CFR 963.14 in reaching this conclusion. In particular, it found that the preliminary design has the ability to contain and limit releases of radioactive materials; the ability to implement control and emergency systems to limit exposures to radiation; the ability to maintain a system and components that perform their intended safety functions; and the ability to preserve the option to retrieve wastes during the pre-closure period. The annual doses of radiation to which the Pre-Closure Safety Evaluation projected individuals in the vicinity of the repository and workers would be exposed are set out in the following table. These doses fall well below the levels that the radiation protection standards establish.

I have carefully reviewed the Pre-Closure Safety Evaluation and find its conclusions persuasive. I am therefore convinced that a repository can be built at Yucca Mountain that will operate safely without harming those in the repository's vicinity during the pre-closure period. Finally, I would note that although many aspects of this project are controversial, there is no controversy of which I am aware concerning this aspect of the Department's conclusions. This stands to reason. The kinds of activities that would take place at the repository during the pre-closure period " essentially, the management and handling of nuclear materials including packaging and emplacement in the repository " are similar to the kinds of activities that at present go on every day, and have gone on for years, at temporary storage sites around the country. These activities are conducted safely at those sites, and no one has advanced a plausible reason why they could not be conducted equally if not more safely during pre-closure operations at a new, state-of-the-art facility at Yucca Mountain.

That is not an insignificant point, since the pre-closure period will last at least 50 years after the start of emplacement, which will begin at the earliest eight years from today. Moreover, the Department's Pre-Closure Safety Evaluation also assumed a possible alternative pre-closure period of 300 years from the beginning of emplacement, and its conclusions remained unchanged. Thus, the Department's conclusion that the repository can operate safely for the next 300 years " or for about three generations longer than the United States has existed " has not been seriously questioned.

[35] 10 CFR part 963.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Yucca Mountain Science and Engineering Report, Revision 1.

TABLE 1.—SUMMARY PRE-CLOSURE DOSE PERFORMANCE CRITERIA AND EVALUATION RESULTS [41]

Standard	Limits	Results
Public Exposures [a]		
Pre-closure standard: 10 CFR 63.204, referenced in 10 CFR 963.2; Pre-Closure Performance Objective for normal operations and Category 1 event sequences per 10 CFR 63.111(a)(2), referenced in 10 CFR 963.2.	15 mrem/yr [b]	0.06 mrem/yr [b]
Constraint specified for air emissions of radioactive material to the environment (not a dose limitation): 10 CFR 20.1101 (d) [c].	10 mrem/yr [b,d]	0.06 mrem/yr [b]
Dose limits for individual member of the public for normal operations and Category 1 event sequences: 10 CFR 20.1301 [c].	100 mrem/yr [b,d]	0.06mrem/yr [b]
	2 mrem/hr in any unrestricted area from external sources.	2 mrem/hr
Pre-Closure Performance Objective for any Category 2 event sequence: 10 CFR 63.111(b)(2), referenced in 10 CFR 963.2.	5 rem [b]	0.02 rem [b]
	50 rem organ or tissue dose (other than the lens of the eye).	0.10 rem
	15 rem lens of the eye dose	0.06 rem
	50 rem skin dose	0.04 rem [b]
Workers' Exposures		
Occupational Dose Limits for Adults from normal operational emissions and Category 1 event sequences: 10 CFR 20.1201 [e].	5 rem/yr [b]	0.01 rem/yr [b]
	50 rem/yr organ or tissue dose (other than the lens of the eye).	0.10 rem/yr
	15 rem/yr lens of the eye dose	0.15 rem/yr
	50 rem/yr skin dose	0.13 rem/yr
Routine Occupational Dose Limits for Adults: 10 CFR 20.1201 [e].	5 rem/yr [b]	0.06 to 0.79 rem/yr [b]

[a] Results for public exposures are calculated at the site boundary.
[b] Total effective dose equivalent.
[c] 10 CFR 63.111(a)(1), which is referenced in 10 CFR 963.2, would require repository operations area to meet the requirements of 10 CFR part 20.
[d] 10 CFR 20.1301(a)(1), which is cross-referenced through 10 CFR 963.2; dose limit to extent applicable.
[e] 10 CFR 63.111(b)(1), which referenced in 10 CFR 963.2, would require repository design objectives for Category 1 and normal operations to meet 10 CFR 63.111(a)(1) requirements (10 CFR part 20).

7.2. Results of Post-Closure Evaluations

The[41] most challenging aspect of evaluating Yucca Mountain is assessing the likely post-closure performance of a repository 10,000 years into the future. As previously explained, the Department's Guidelines contemplate that this will be done using a Total System Performance Assessment. That assessment involves using data compiled from scientific investigation into the natural processes that affect the site, the behavior of the waste, and the behavior of the engineered barriers such as the waste packages; developing models from these data; then developing a single model of how, as a whole, a repository at Yucca Mountain is likely to behave during the post-closure period. The model is then used to project radiation doses to which people in the vicinity of the Mountain are likely to be exposed as a result of the repository. Finally, the assessment compares the projected doses with the radiation protection standards to determine whether the repository is likely to comply with them.

The challenge, obviously, is that this involves making a prediction a very long time into the future concerning the behavior of a very complex system. To place 10,000 years into perspective, consider that the Roman Empire flourished nearly 2,000 years ago. The pyramids were built as long as 5,000 years ago, and plants were domesticated some 10,000 years ago. Accordingly, as the NRC explained, "Proof that the geologic repository will conform with the objectives for post-closure performance is not to be had in the ordinary sense of the word because of the uncertainties inherent in the understanding of the evolution of the geologic setting, biosphere, and engineered barrier system"[42] over 10,000 years. The judgment that the NRC envisions making is therefore not a certainty that the repository will conform to the standard, certainty being unattainable in this or virtually any other important matter where choices must be made. Rather, as it goes on to explain, "For such long-term performance, what is required is reasonable expectation, making allowance for the time period, hazards, and uncertainties involved, that the outcome will conform with the objectives for post-closure performance for the geologic repository."[43] The Nuclear Waste Technical Review Board recently summarized much the same thought (emphasis added): "Eliminating all uncertainty associated with estimates of repository performance would never be possible at any repository site."[44]

These views, in turn, inform my understanding of the judgment I am expected to make at this stage of the proceeding in evaluating the likely post-closure performance of a repository at Yucca Mountain. To conclude that it is suitable for post-closure, I do not need to know that we have answered all questions about the way each aspect of the repository will behave 10,000 years from now; that would be an impossible task. Rather, what I need to decide is whether, using the TSPA results, and fully bearing in mind the inevitable uncertainties connected with such an enterprise, I can responsibly conclude that we know enough to warrant a predictive judgment on my part that, during the post-closure period, a repository at Yucca Mountain is likely to meet the radiation protection standards.

I believe I can. Essentially, the reason for this is the system of multiple and redundant safeguards that will be created by the combination of the site's natural barriers and the engineered ones we will add. Even given many uncertainties, this calculated redundancy makes it likely that very little, if any, radiation will find its way to the accessible environment.

Before I describe in broad terms how the TSPA results and the criteria used in the regulations lead to this conclusion, I would like to give an illustration of how this works. The illustration draws on the TSPA analyses, but also explains what these analyses mean in the real world.

[41] *Yucca Mountain Site Suitability Evaluation.*

[42] Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada, Final Rule, 66 FR 55731, 55804, November 2, 2001.

[43] Ibid.

[44] Nuclear Waste Technical Review Board Letter Report from all Board members to Speaker Hastert, Senator Byrd, and Secretary Abraham, January 24, 2002.

An Example

The most studied issue relating to Yucca Mountain, and the single most pressing concern many have felt about the post-closure phase of a repository there, is whether there might be a way for radionuclides from the emplaced nuclear materials to contaminate the water supply. This is not a problem unique to Yucca Mountain. Rather, besides disruptive events discussed later, water is the primary mechanism to transport radionuclides to people and is also the most likely mechanism for radionuclides to escape from the storage facilities we have now.

In the case of Yucca Mountain, the concern has been that rainwater seeping into the Mountain might contact disposal casks and carry radionuclides down to the water table in sufficient amounts to endanger sources of groundwater. In my judgment, when one considers everything we have learned about the multiple natural and engineered barriers that lie at the core of the Department's planning for this Project, this concern turns out to have virtually no realistic foundation.

Yucca Mountain is in the middle of a desert. Like any desert, it has an arid climate, receiving less than eight inches of rain in an average year. Most of that runs off the Mountain or evaporates. Only about five percent, less than four-tenths of an inch per year, ever reaches repository depth.

In order to reach the tunnels where the waste casks would be housed, this water must travel through about 800 feet of densely welded and bedded tuffs,[45] a trip that will typically require more than 1,000 years. The amount of water that eventually reaches the repository level at any point in time is very small, so small that capillary forces tend to retain it in small pores and fractures in the rock. It is noteworthy that all our observations so far indicate that *no* water actually drips into the tunnels at this level and *all* of the water is retained within the rock.

In spite of this finding, our TSPA ran calculations based on the assumption that water does drip into the tunnels. At that point, even just to reach radionuclides in the waste, the water would still have to breach the engineered barriers. These include waste packages composed of an outer barrier of highly corrosion-resistant alloy and a thick inner barrier of high quality stainless steel.

The waste package is designed to prevent contact between the waste pellets and water that might seep into the tunnels unexpectedly, and thus to prevent release of radionuclides.[46] In addition, anchored above each waste package is a titanium drip shield that provides yet more protection against seepage. But even assuming the water defeats both the titanium shield and the metal waste package, the waste form itself is a barrier to the release of radionuclides. Specifically, the spent fuel is in the form of ceramic pellets, resistant to degradation and covered with a corrosion-resistant metal cladding.

Nevertheless, DOE scientists ran a set of calculations assuming that water penetrated the titanium shield and made small holes in three waste packages, due to manufacturing defects (even though the manufacturing process will be tightly controlled). The scientists further assumed that the water dissolves some of the ceramic waste. Even so, the analyses showed that only small quantities of radionuclides would diffuse and escape from the solid waste form. In order to reach the water table from the repository, the water, now assumed to be carrying radionuclides, must travel another 800 feet through layers of rock, some of which are nearly impenetrable. During this trip, many of the radionuclides are adsorbed by the rock because of its chemical properties.

The result of all this is instructive. Even under these adverse conditions, all assumed in the teeth of a high probability that not one of them will come to pass, the amount of radionuclides reaching the water table is so low that annual doses to people who could drink the water are well below the applicable radiation standards, and less than a millionth of the annual dose people receive from natural background radiation. Extrapolating from these calculations shows that even if *all* of the waste packages were breached in the fashion I have described above, the resulting contribution to annual dose would still be below the radiation safety standards, and less than one percent of the natural background.[47]

Total System Performance More Generally

It is important to understand that there is nothing unique about the kind of planning illustrated in the water seepage scenario described above. Rather, the scenario is characteristic of the studies DOE has undertaken and the solutions it has devised: deliberately pessimistic assumptions incorporated sometimes to the point of extravagance, met with multiple redundancies to assure safety. For example, one of our scenarios for Nevada postulates the return of ice ages, and examines Yucca Mountain assuming that it would receive about twice as much rain as it does today with four times as much infiltration into the Mountain.

As in the example above, the Department evaluated physical and historical information used to develop models of repository components, and then employed those models to forecast how the repository would perform in the post-closure period. These results are described at length in the TPSA analyses and summarized in Chapter 4 of the Yucca Mountain Science and Engineering Report.[48]

The Department used the suitability criteria set forth in 10 CFR 963.17 in the TSPA analyses. It carefully evaluated and modeled the behavior of characteristics of the site, such as its geologic, hydrologic, geophysical, and geochemical properties. Likewise it evaluated what are called unsaturated zone flow characteristics, such as precipitation entering the Mountain and water movement through the pores of the rock—in other words, natural processes which affect the amount of water entering the unsaturated zone above the repository and potentially coming in contact with wastes inside. DOE also evaluated and modeled near-field environment characteristics, such as effects of heat from the waste on waterflow through the site, the temperature and humidity at the engineered barriers, and chemical reactions and products that could result from water contacting the engineered barriers.

The Department carefully studied and modeled the characteristics of the engineered barriers as they aged. DOE emphasized specifically those processes important to determining waste package lifetimes and the potential for corroding the package. It examined waste form degradation characteristics, including potential corrosion or break-down of the cladding on the spent fuel pellets and the ability of individual radionuclides to resist dissolving in water that might penetrate breached waste packages. It examined ways in which radionuclides could begin to move outward once the engineered barrier system has been degraded—for example, whether colloidal particles might form and whether radionuclides could adhere to these particles as they were assumed to wash through the remaining barriers. Finally, the Department evaluated and modeled saturated and unsaturated zone flow characteristics, such as how water with dissolved radionuclides or colloidal particles might move through the unsaturated zone below the repository, how heat from the waste would affect waterflow through the site, and how water with dissolved radionuclides would move in the saturated zone 800 feet beneath the repository (assuming it could reach that depth).

Consistent with 10 CFR 963.17, the Department also evaluated the lifestyle and habits of individuals who potentially could be exposed to radioactive material at a future time, based, as would be required by NRC

[45] Yucca Mountain consists of alternating layers of welded and nonwelded volcanic material known as welded and non-welded tuff: welded tuff at the surface, welded tuff at the level of the repository, and an intervening layer of nonwelded tuffs. These nonwelded units contain few fractures; thus, they delay the downward flow of moisture into the welded tuff layer below, where the repository would be located. At the repository level, water in small fractures has a tendency to remain in the fractures rather than flow into larger openings, such as tunnels. Thus, the small amount of water traveling through small fractures near any emplacement tunnel would tend to flow around the tunnel, rather than seeping, forming a drip, and falling onto the drip shields below. Non-welded tuffs below the repository also provide a significant barrier to radionuclide transport. Deposits of minerals in the fractures demonstrate that for the last several million years the repository host rock has been under unsaturated conditions, even when higher precipitation, owing to the continent's overall glacial conditions, prevailed at the Mountain's surface.

[46] These engineered barriers will protect the waste under a wide range of conditions. For example, the barriers are protected by their underground location from the daily variations in temperature and moisture that occur above ground. As a result, the Mountain provides favorable conditions for the performance of these barriers. Indeed, the battery of tests we have conducted suggests that the waste packages are extremely resistant to corrosion.

[47] Yucca Mountain Science and Engineering Report, Revision 1.

[48] Ibid.

licensing regulations,[49] on representative current conditions. Currently, there are about 3,500 people who live in Amargosa Valley, the closest town to Yucca Mountain. They consume ground or surface water from the immediate area through direct extraction or by eating plants that have grown in the soil. The Department therefore assumed that the "reasonably maximally exposed individual"—that is, the hypothetical person envisioned to test whether the repository is likely to meet required radiation protection standards—likewise would drink water and eat agricultural products grown with water from the area, and built that assumption into its models.

Using the models described above, as well as a host of others it generated taking account of other relevant features, events and processes that could affect the repository's performance, the Department developed a representative simulation of the behavior of the proposed Yucca Mountain site. It then considered thousands of possibilities about what might happen there. For example, it considered the possibility that waste packages might be manufactured defectively. It considered the possibility that the climate would change. It considered earthquakes. Our studies show that earthquakes probably will occur at Yucca Mountain sometime in the future. Because the occurrence of earthquakes is difficult to predict, our models conservatively treat earthquakes by assuming that they will occur over the next 10,000 years.

Essentially, if the Department believed that there was close to a 1 in 10,000 per year probability of some potentially adverse occurrence in the course of the 10,000 year post-closure period (which comes to a probability close to one during the entire period) the Department considered that possibility, unless it concluded the occurrence would not affect the repository's performance. It then used the simulation model to calculate what the resulting dose would be based on each such possibility. Finally, it used the mean peak values of the results of these calculations to project the resulting dose.

The Department then proceeded to consider the impact of disruptive events, such as volcanism, with a lower probability of occurrence, on the order of one in 10,000 over the entire 10,000 year period (meaning roughly a one in a 100 million per year of occurring during that time). This led it to analyze, for example, the effects that a volcano might have on the repository's waste containment capabilities. Scientists started with a careful analysis of the entire geologic setting of Yucca Mountain. Then, with substantial data on regional volcanoes, they used computer modeling to understand each volcanic center's controlling structures. Experts then estimated the likelihood of magma intruding into one of the repository's emplacement tunnels. The DOE estimates the likelihood of such an event's occurring during the first 10,000 years after repository closure to be one chance in about 70 million per year, or one chance in 7,000 over the entire period.

Including volcanoes in its analyses, the TSPA results still indicate that the site meets the EPA standards.[50] What the calculations showed is that the projected, probability-weighted maximum mean annual dose to an individual from the repository for the next 10,000 years is one-tenth of a millirem. That is less than one-fifth of the dose an individual gets from a one-hour airplane flight. And it is less than one one-hundredth of the dose that DOE's Guidelines, using the EPA standards, specify as acceptable for assessing suitability.

Finally, in a separate assessment, analysts studied a hypothetical scenario under which people inadvertently intruded into the repository while drilling for water. The Guidelines' radiation protection standards, based on EPA and NRC rules, specify that as part of its Total System Performance Assessment, DOE should determine when a human-caused penetration of a waste package could first occur via drilling, assuming the drillers were using current technology and practices and did not recognize that they had hit anything unusual. If such an intrusion could occur within 10,000 years, the 15 millirem dose limit would apply.

DOE's analyses, however, indicate that unrecognized contact through drilling would not happen within 10,000 years. Under conditions that DOE believes can realistically be expected to exist at the repository, the waste packages are extremely corrosion-resistant for tens of thousands of years. Even under pessimistic assumptions, the earliest time DOE could even devise a scenario under which a waste package would be unnoticeable to a driller is approximately 30,000 years. Before then, the waste package structure would be readily apparent to a driller who hit it.

Table 2 presents the summary results of the Total System Performance Assessment analyses and how they compare to the radiation protection standards.[51]

In Summary

Using the methods and criteria set out in DOE's Yucca Mountain Site Suitability Guidelines, I am convinced that the Yucca Mountain site is scientifically suitable—in a word, safe—for development of a repository. Specifically, on the basis of the safety evaluation DOE has conducted pursuant to 10 CFR 963.13, it is my judgment that a repository at the site is likely to meet applicable radiation protection standards for the pre-closure period. And on the basis of the Total System Performance Assessment DOE has conducted pursuant to 10 CFR 963.16, it is my judgment that a repository at the site is likely to meet applicable radiation protection standards for the post-closure period as well. Additionally, I have evaluated the pre-closure suitability criteria of 10 CFR 963.14 and the post-closure suitability criteria of 10 CFR 963.17, and am convinced that the safety evaluations were done under the stringent standards required. Accordingly, I find the Yucca Mountain site suitable for development of a repository.

8. The National Interest

Having determined that the site is scientifically suitable, I now turn to the remaining factors I outlined above as bearing on my Recommendation. Are there compelling national interests favoring going forward with a repository at Yucca Mountain? If so, are there countervailing considerations of sufficient weight to overcome those interests? In this section I set out my conclusions on the first question. In section 9 I set out my views on the second.

8.1. Nuclear Science and the National Interest

Our country depends in many ways on the benefits of nuclear science: in the generation of twenty percent of the Nation's electricity; in the operation of many of the Navy's most strategic vessels; in the maintenance of the Nation's nuclear weapons arsenal; and in numerous research and development projects, both medical and scientific. All these activities produce radioactive wastes that have been accumulating since the mid-1940s. They are currently scattered among 131 sites in 39 states, residing in temporary surface storage facilities and awaiting final disposal. In exchange for the many benefits of nuclear power, we assume the cost of managing its byproducts in a responsible, safe, and secure fashion. And there is a near-universal consensus that a deep geologic facility is the only scientifically credible, long-term solution to a problem that will only grow more difficult the longer it is ignored.

TABLE 2.—SUMMARY POST-CLOSURE DOSE AND ACTIVITY CONCENTRATION LIMITS AND EVALUATION RESULTS

Standard	Limits	Results[e]
Individual protection standard: 10 CFR 63.311, referenced in 10 CFR 963.2.	15 mrem/yr TEDE	0.1mrem/yr[a] (HTOM) 0.1 mrem/yr[a] (LTOM)
Human intrusion standard: 10 CFR 63.321, referenced in 10 CFR 963.2.	15 mrem/yr TEDE	NA[b]

[49] 10 CFR part 63.

[50] The results produced under volcanic scenarios are weighted by probability under the NRC method specified for how to treat low probability events. 10 CFR Part 63.

[51] Yucca Mountain Site Suitability Evaluation.

TABLE 2.—SUMMARY POST-CLOSURE DOSE AND ACTIVITY CONCENTRATION LIMITS AND EVALUATION RESULTS—Continued

Standard	Limits	Results [e]
Groundwater protection standard: 10 CFR 63.331, referenced in 10 CFR 963.2.	5 pCi/L combined radium-226 and radium-228, including natural background.	1.04 pCi/L[c] (HTOM) 1.04 pCi/L[c] (LTOM)
	15 pCi/L gross alpha activity (including radium-226 but excluding radon and uranium), including natural background.	1.1 pCi/L[c, d] (HTOM) 1.1 pCi/L[c, d] (LTOM)
	4 mrem/yr to the whole body or any organ from combined beta- and photon-emitting radionuclides.	.000023 mrem/yr (HTOM) .000013 mrem/yr (LTOM)

[a] Probability-weighted peak mean dose equivalent for the nominal and disruptive scenarios, which include igneous activity; results are based on an average annual water demand of approximately 2,000 acre-ft; the mean dose for groundwater-pathway-dominated scenarios would be reduced by approximately one-third by using 3,000 acre-ft.

[b] Human-intrusion-related releases are not expected during the period of regulatory compliance; the DOE has determined that the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the driller is at least 30,000 years, so the dose limits do not apply for purposes of the site suitability evaluation.

[c] These values represent measured natural background radiation concentrations; calculated activity concentrations from repository releases are well below minimum detection levels, background radiation concentrations, and regulatory limits.

[d] Gross alpha background concentrations are 0.4 pCi/L ± 0.7 (for maximum of 1.1 pCi/L).

[e] Peak value of the mean probability-weighted results within the regulatory timeframe.

TEDE=total effective dose equivalent; HTOM=higher temperature operating mode; LTOM=lower-temperature operating mode; NA=not applicable. Source: Williams 2001a, Section 6, Tables 6–1, 6–2, 6–3, and 6–4.

8.2. Energy Security

Roughly 20 percent of our country's electricity is generated from nuclear power. This means that, on average, each home, farm, factory, and business in America runs on nuclear fuel for a little less than five hours a day.

A balanced energy policy—one that makes use of multiple sources of energy, rather than becoming dependent entirely on generating electricity from a single source, such as natural gas—is important to economic growth. Our vulnerability to shortages and price spikes rises in direct proportion to our failure to maintain diverse sources of power. To assure that we will continue to have reliable and affordable sources of energy, we need to preserve our access to nuclear power.

Yet the Federal government's failure to meet its obligation to dispose of spent nuclear fuel under the NWPA—as it has been supposed to do starting in 1998 " is placing our access to this source of energy in jeopardy. Nuclear power plants have been storing their spent fuel on site, but many are running out of space to do so. Unless a better solution is found, a growing number of these plants will not be able to find additional storage space and will be forced to shut down prematurely. Nor are we likely to see any new plants built.

Already we are facing a growing imbalance between our projected energy needs and our projected supplies. The loss of existing electric generating capacity that we will experience if nuclear plants start going off-line would significantly exacerbate this problem, leading to price spikes and increased electricity rates as relatively cheap power is taken off the market. A permanent repository for spent nuclear fuel is essential to our continuing to count on nuclear energy to help us meet our energy demands.

8.3. National Security

8.3.1. Powering the Navy Nuclear Fleet

A strong Navy is a vital part of national security. Many of the most strategically important vessels in our fleet, including submarines and aircraft carriers, are nuclear powered. They have played a major role in every significant military action in which the United States has been involved for some 40 years, including our current operations in Afghanistan. They are also essential to our nuclear deterrent. In short, our nuclear-powered Navy is indispensable to our status as a world power.

For the nuclear Navy to function, nuclear ships must be refueled periodically and the spent fuel removed. The spent fuel must go someplace. Currently, as part of a consent decree entered into between the State of Idaho and the Federal Government, this material goes to temporary surface storage facilities at the Idaho National Environmental and Engineering Laboratory. But this cannot continue indefinitely, and indeed the agreement specifies that the spent fuel must be removed. Failure to establish a permanent disposition pathway is not only irresponsible, but could also create serious future uncertainties potentially affecting the continued capability of our Naval operations.

8.3.2. Allowing the Nation to Decommission Its Surplus Nuclear Weapons and Support Nuclear Non-Proliferation Efforts

A decision now on the Yucca Mountain repository is also important in several ways to our efforts to prevent the proliferation of nuclear weapons. First, the end of the Cold War has brought the welcome challenge to our country of disposing of surplus weapons-grade plutonium as part of the process of decommissioning weapons we no longer need. Current plans call for turning the plutonium into "mixed-oxide" or "MOX" fuel. But creating MOX fuel as well as burning the fuel in a nuclear reactor will generate spent nuclear fuel, and other byproducts which themselves will require somewhere to go. A geological repository is critical to completing disposal of these materials. Such complete disposal is important if we are to expect other nations to decommission their own weapons, which they are unlikely to do unless persuaded that we are truly decommissioning our own.

A repository is important to non-proliferation for other reasons as well. Unauthorized removal of nuclear materials from a repository will be difficult even in the absence of strong institutional controls. Therefore, in countries that lack such controls, and even in our own, a safe repository is essential in preventing these materials from falling into the hands of rogue nations. By permanently disposing of nuclear weapons materials in a facility of this kind, the United States would encourage other nations to do the same.

8.4. Protecting the Environment

An underground repository at Yucca Mountain is important to our efforts to protect our environment and achieve sustainable growth in two ways. First, it will allow us to dispose of the radioactive waste that has been building up in our country for over fifty years in a safe and environmentally sound manner. Second, it will facilitate continued use and potential expansion of nuclear power, one of the few sources of electricity currently available to us that emits no carbon dioxide or other greenhouse gases.

As to the first point: While the Federal government has long promised that it would assume responsibility for nuclear waste, it has yet to start implementing an environmentally sound approach for disposing of this material. It is past time for us to do so. The production of nuclear weapons at the end of the Second World War and for many years thereafter has resulted in a legacy of high-level radioactive waste and spent fuel, currently located in Tennessee, Colorado, South Carolina, New Mexico, New York, Washington, and Idaho. Among these wastes, approximately 100,000,000 gallons of high-level liquid waste are stored in, and in some instances have leaked from, temporary holding tanks. In addition to this high-level radioactive waste, about 2,100 metric tons of solid, unreprocessed fuel from a plutonium-production reactor are stored at the Hanford Nuclear Reservation, with another 400 metric tons stored at other DOE sites.

In addition, under the NWPA, the Federal government is also responsible for disposing of spent commercial fuel, a program that was to have begun in 1998, four years ago. More than 161 million Americans, well more than half the population, reside within 75 miles of a major nuclear facility—and, thus, within 75 miles of that facility's aging and temporary capacity for storing this material. Moreover, because nuclear reactors require abundant water for cooling, on-site storage tends to be located near rivers, lakes, and seacoasts. Ten *closed* facilities, such as Big Rock Point, on the banks of Lake Michigan, also house spent fuel and incur significant annual costs without providing any ongoing benefit. Over the long-term, without active management and monitoring, degrading surface storage facilities may pose a risk to any of 20 major U.S. lakes and waterways, including the Mississippi River. Millions of Americans are served by municipal water systems with intakes along these waterways. In recent letters, Governors Bob Taft of Ohio [52] and John Engler of Michigan [53] raised concerns about the advisability of long-term storage of spent fuel in temporary systems so close to major bodies of water. The scientific consensus is that disposal of this material in a deep underground repository is not merely the safe answer and the right answer for protecting our environment but the *only* answer that has any degree of realism.

In addition, nuclear power is one of only a few sources of power available to us now in a potentially plentiful and economical manner that could drastically reduce air pollution and greenhouse gas emissions caused by the generation of electricity. It produces no controlled air pollutants, such as sulfur and particulates, or greenhouse gases. Therefore, it can help keep our air clean, avoid generation of ground-level ozone, and prevent acid rain. A repository at Yucca Mountain is indispensable to the maintenance and potential expansion of the use of this environmentally efficient source of energy.

8.5. Facilitating Continuation of Research, Medical, and Humanitarian Programs

The Department has provided fuel for use in research reactors in domestic and foreign universities and laboratories. Research reactors provide a wide range of benefits including the production of radioisotopes for medical use—*e.g.*, in body-scan imaging and the treatment of cancer. To limit the risk to the public, and to support nuclear non-proliferation objectives, these laboratories are required to return the DOE-origin spent fuel from domestic research reactors and from foreign research reactors. These spent fuels are temporarily stored at Savannah River, South Carolina, and at the Idaho National Engineering and Environmental Laboratory while awaiting disposal in a permanent repository.

Again, we can either implement a permanent solution—Yucca Mountain—or risk eroding our capacity to conduct this kind of research. The chances of a person becoming sick from the nuclear materials to be stored at the Yucca Mountain site are, as shown above, all but non-existent. Responsible critics must balance that against the chance of a person becoming sick as a result of the research that may not be undertaken, remaining sick for want of the drug that may not be found, or dying for lack of the cure that may not be developed—all because the nuclear fuel-dependent science that could produce these things was never done, our country having run out of places to dispose of the waste.

8.6. Assisting Anti-Terrorism at Home

As I have noted previously, spent fuel and other high level radioactive waste is presently stored at temporary storage facilities at 131 locations in 39 states. Ten of these are at shutdown reactor sites for which security would not otherwise be required. Moreover, many reactors are approaching their storage capacity and are likely to seek some form of off-site storage, thereby creating potential new targets.

Storage by reactor-owners was intended to be a temporary arrangement. The design of the storage facilities reflects that fact. They tend to be less secured than the reactors themselves, and the structures surrounding the fuel stored in aboveground containers are also less robust.

These storage facilities should be able to withstand current threats. But as the determination and sophistication of terrorists increases, that may well change. That means we will have to choose one of two courses. We can continue to endeavor to secure each of these sites, many of which, as noted above, are close to major metropolitan areas and waterways. Or we can consolidate this fuel in one remote, secure, arid underground location and continue to develop state-of-the-art security arrangements to protect it there.

To me the choice is clear. The proposed geologic repository in the desert at Yucca Mountain offers unique features that make it far easier to secure against terrorist threats. These include: (1) Disposal 800 feet below ground; (2) remote location; (3) restricted access afforded by Federal land ownership of the Nevada Test Site; (4) proximity to Nellis Air Force Range; (5) restricted airspace above the site; (6) far from any major waterways. The design and operation of a geologic repository, including surface operations, can also incorporate from the beginning appropriate features to protect against a terrorist threat and can be changed, if necessary, to respond to future changes in the terrorist threat.

An operational repository will also be an important signal to other nuclear countries, none of which have opened a repository. Inadequately protected nuclear waste in any country is a potential danger to us, and we can't expect them to site a facility if we, with more resources, won't. A fresh look at nuclear material security should involve new concepts such as those inherent in a geologic repository, and should set the standard for the manner in which the international community manages its own nuclear materials.

To understand Yucca Mountain's relative advantage in frustrating potential terrorist attacks compared to the status quo, one need only ask the following: If nuclear materials were already emplaced there, would anyone even suggest that we should spread them to 131 sites in 39 states, at locations typically closer to major cities and waterways than Yucca Mountain is, as a means of *discouraging* a terrorist attack?

8.7. Summary

In short, there are important reasons to move forward with a repository at Yucca Mountain. Doing so will advance our energy security by helping us to maintain diverse sources of energy supply. It will advance our national security by helping to provide operational certainty to our nuclear Navy and by facilitating the decomissioning of nuclear weapons and the secure disposition of nuclear materials. It will help us clean up our environment by allowing us to close the nuclear fuel cycle and giving us greater access to a form of energy that does not emit greenhouse gases. And it will help us in our efforts to secure ourselves against terrorist threats by allowing us to remove nuclear materials from scattered above-ground locations to a single, secure underground facility. Given the site's scientific and technical suitability, I find that compelling national interests counsel in favor of taking the next step toward siting a repository at Yucca Mountain.

9. None of the Arguments Against Yucca Mountain Withstands Analysis

As explained above, after months of study based on research unique in its scope and depth, I have concluded that the Yucca Mountain site is fully suitable under the most cautious standards that reasonably might be applied. I have also concluded that it serves the national interest in numerous important ways. The final question I shall examine is whether the arguments against its designation not rise to a level that outweighs the case for going forward. I believe they do not, as I shall explain. I do so by briefly describing these principle arguments made by opponents of the Project, and then responding to them.

9.1. Assertion 1: The Citizens of Nevada Were Denied an Adequate Opportunity To Be Heard

Critics have claimed that the decision-making process under the NWPA was unfair because it allowed insufficient opportunity for public input, particularly from the citizens of Nevada. That is not so. There was ample opportunity for public discussion and debate; the Department in fact went well beyond the Act's requirements in providing notice and the opportunity to be heard.

My predecessors and I invited and encouraged public, governmental, and tribal participation at all levels. The Department also made numerous Yucca Mountain documents available to the public. These included several specifically prepared to inform any who might be interested of the technical information and analyses that I would have before me as I considered the suitability of the site. There was no statutory requirement for producing these documents; I considered it important to make them available, and thus to provide a timely

[52] Letter, Governor Bob Taft to Secretary Spencer Abraham, July 30, 2001.

[53] Letter, Governor John Engler to Secretary Spencer Abraham, September 5, 2001.

sharing of information that would form the basis of my consideration and, ultimately, decision.

To assist in discharging part of the Secretarial responsibilities created by the Act, the Department conducted official public meetings before starting the Environmental Impact Statement. Subsequently, the Department held a total of 24 public hearings on the draft and the supplemental draft Environmental Impact Statements. With the release of the Yucca Mountain Science and Engineering Report in May 2001, the DOE opened a public comment period lasting approximately six months; the period continued through the release of the Preliminary Site Suitability Evaluation in July 2001 and closed on October 19, 2001. After publishing DOE's final rule, "Yucca Mountain Site Suitability Guidelines," on November 14, 2001, I announced an additional 30-day supplemental comment period with a closing date of December 14, 2001. During these combined public comment periods, the DOE held 66 additional public hearings across Nevada and in Inyo County, California, to receive comments on my consideration of a possible recommendation of the Yucca Mountain site. More than 17,000 comments were received.[54]

The lengths to which the Department went to solicit public comment can be seen in the details: From 1995 through 2001, there were 126 official hearings with a court reporter present. The Nevada cities where these hearings were held included: Amargosa Valley, Battle Mountain, Caliente, Carson City, Crescent Valley, Elko, Ely, Fallon, Gardnerville, Goldfield, Hawthorne, Las Vegas, Lovelock, Pahrump, Reno, Tonopah, Virginia City, Winnemucca, and Yerington. Elsewhere, meetings were held in Independence, Lone Pine, Sacramento, and San Bernardino in California; Washington, DC; Boise, ID; Chicago, IL; Denver, CO; Dallas/Ft. Worth, TX; Salt Lake City, UT; Baltimore, MD; Albany, NY; Atlanta, GA; Kansas City, MO.; Cleveland, OH; and St. Louis, MO.

There were 600 hours of public meetings for the 2001 hearings alone. All in all, there were a total of 528 comment days, or about a year and a half. Additionally, the science centers were open for 340 hours (both with and without court reporter) to receive comments. Since 1991, there have been 2,062 tours of Yucca Mountain, and 49,073 visitors have been to the site.

In light of the extensive opportunities DOE has provided for public input, it is my judgment that the opportunities for hearing and consideration of comments were abundant and met any procedural measure of fairness.

9.2. Assertion 2: The Project Has Received Inadequate Study

Critics have said that there has been inadequate study to determine Yucca Mountain's suitability. To the contrary, and as I believe section 6 of this Recommendation makes clear at length, the characterization process at Yucca Mountain is unprecedented for any even remotely comparable undertaking. Indeed, Yucca Mountain studies have now been under way for nearly five times as long as it took to build the Hoover Dam and more than six times the entire duration of the Manhattan Project. Yucca Mountain is, by any measure, the most exhaustively studied project of its kind the world has ever known.

Beginning in 1978 and continuing to the present day, the Department has spent billions of dollars on characterization studies. There has been ongoing dialogue between the Department and the NRC over the goals, content and results of the test programs. As noted, there have been ample opportunities for public involvement. At this still early stage, and with many more years before the Yucca Mountain site could become operational, the request for yet more preliminary study, even before seeking a license from the NRC, is unsupportable. Additional study will be undertaken at stages to come as an appropriate part of the licensing process.

For these reasons, I have concluded that the current body of accumulated scientific and technical knowledge provides a more than adequate technical basis to designate the Yucca Mountain site, thereby beginning the licensing phase of the project. For convenience, a listing of the types of tests that have been performed is provided in Table 3.

9.3. Assertion 3: The Rules Were Changed in the Middle of the Game

The State of Nevada claims that at some point the Department concluded that Yucca Mountain was not suitable under earlier regulations, and then changed the rules to fit the site. That is not true. Even the most elementary knowledge of the history of the program shows this claim is baseless.

The Guidelines did change, but not in a way that disadvantaged critics from making their case, and certainly not to suit any pre-existing agenda at the Department. Rather, they were changed to conform to changes in the statutory and regulatory framework governing the siting process and in the scientific consensus regarding the best approach for assessing the likely performance of a repository over long periods of time.

TABLE 3.—TYPES OF TESTS PERFORMED TO COLLECT DATA FOR SITE CHARACTERIZATION OF YUCCA MOUNTAIN[55]

Process models	Types of tests and studies
Unsaturated Zone (the rocks above the water table containing little water that limit the amount of water that can contact waste packages).	Future climate studies, Infiltration model studies, Unsaturated zone flow model studies, Seepage model studies, Unsaturated zone transport studies.
Near-Field Environment (moisture, temperature, and chemistry conditions surrounding and affecting the waste packages).	Drift scale test, Single heater test, Large block test, Field tests on coupled processes, Laboratory coupled processes tests.
Engineered Barrier System (EBS) (man-made features comprising the repository that influence how radionuclides might move).	Cementicious materials tests, EBS design tests, In-drift gas composition tests, In-drift water chemistry, precipitates and salts tests, Microbial communities tests, Radionuclide transport tests, Drift degradation analysis tests, Rock mass mechanical properties tests.
Waste Package (metal container that the wastes would be placed in) ...	Waste package environment tests, Materials selection studies, General corrosion tests, Localized corrosion tests, Stress corrosion cracking tests, Hydrogen-induced cracking tests, Metallurgical stability/phases tests, Manufacturing defects tests, Filler material tests, Welding tests.
Waste Form (high-level wastes and spent fuel that are the source of radionuclides).	Radioisotope inventory study, In-package chemistry tests, Commercial spent nuclear fuel cladding degradation tests, Defense spent nuclear fuel degradation tests, High level waste glass degradation tests, Dissolved radioisotope concentration tests, Colloid radioisotope concentration tests.
Saturated Zone (movement of water in rocks below the water table)	Saturated zone characterization studies, Saturated zone flow studies Saturated zone transport studies.
Integrated Site Model (computer models of the geology)	Geologic framework model studies, Rock properties model studies, Mineralogical model studies.

[54] Comment Summary Document and Supplemental Comment Summary Document, February 2002.

TABLE 3.—TYPES OF TESTS PERFORMED TO COLLECT DATA FOR SITE CHARACTERIZATION OF YUCCA MOUNTAIN[55]—Continued

Process models	Types of tests and studies
Site Description (description of the repository)	Geologic mapping studies, Fracture data collection studies, Natural resources assessment studies, Erosion studies, Natural and man-made analog studies.
Disruptive Events (unlikely disruptions to the repository)	Probability of igneous activity studies, Characteristics of igneous activity studies, Seismic hazards studies.

The DOE's original siting Guidelines were promulgated in 1984. At the time, the Nuclear Waste Policy Act called on the Department to evaluate and characterize multiple sites and to recommend one or more among them. Also at the time, consistent with the scientific and regulatory consensus of the late 1970's, the Nuclear Regulatory Commission had in place regulations for licensing repositories that sought to protect against radioactive releases by focusing on the performance of individual subparts, or subsystems, that were part of the repository. Finally, the EPA had proposed rules for repositories that also focused on limiting the amount and type of radionuclides released from a repository. Consistent with this framework, DOE's Guidelines focused on making comparative judgments among sites and emphasized mechanisms for evaluating the performance of potential repository subsystems against the NRC subsystem performance requirements and the EPA release limits.

Starting in 1987, however, both the regulatory framework and scientific consensus began to change. To begin with, Congress changed the law governing evaluation and selection of a repository site. In 1987, it amended the Nuclear Waste Policy Act to eliminate any authority or responsibility on the part of the Department for comparing sites, directed the Department to cease all evaluation of any potential repository sites other than Yucca Mountain, and directed it to focus its efforts exclusively on determining whether or not to recommend the Yucca Mountain site. This change was important, as it eliminated a central purpose of the Guidelines—to compare and contrast multiple fully characterized sites for ultimate selection of one among several for recommendation.

Next, Congress reinforced its directive to focus on Yucca Mountain in section 801 of the Energy Policy Act of 1992. This provision also gave three new directives to EPA. First, it directed EPA, within 90 days of enactment, to contract with the National Academy of Sciences for a study regarding, among other topics, whether a specific kind of radiation protection standard for repositories would be protective of public health and safety. The question posed was whether standards prescribing a maximum annual effective dose individuals could receive from the repository—as opposed to the then-current standards EPA had in place focusing on releases—would be reasonable standards for protecting health and safety at the Yucca Mountain site. Second, Congress directed EPA, consistent with the findings and recommendations of the Academy, to promulgate such standards no later than one year after completion of the Academy's study. Finally, it directed that such standards, when promulgated, would be the exclusive public health and safety standards applicable to the Yucca Mountain site. Section 801 also contained a directive to the NRC that, within a year after EPA's promulgation of the new standards, NRC modify its licensing criteria for repositories under the NWPA as necessary to be consistent with the EPA standards.

Pursuant to the section 801 directive, in 1995 the National Academy of Sciences published a report entitled "Technical Bases for Yucca Mountain Standards."[56] This report concluded that dose standards would be protective of public health and safety.[57] It also concluded that if EPA adopted this kind of standard, it would be appropriate for the NRC to revise its licensing rules, which currently focused on subsystem performance, to focus instead on the performance of the total repository system, including both its engineered and natural barriers. It noted that this would be a preferable approach because it was the performance of the entire repository, not the different subsystems, that was crucial, and that imposition of separate subsystem performance requirements might result in suboptimal performance of the repository as a whole.[58] Finally, National Academy of Sciences noted that its recommendations, if adopted, "impl[ied] the development of regulatory and analytical approaches for Yucca Mountain that are different from those employed in the past" whose promulgation would likely require more than the one-year timeframe specified in the Energy Policy Act of 1992.

Along with these changes in regulatory thinking, the scientific and technical understanding of repository performance at Yucca Mountain was advancing. The DOE's use of Total System Performance Assessment to evaluate repository performance became more sophisticated, and helped focus DOE's research work on those areas important to maximizing the safety of the repository and minimizing public exposure to radionuclide releases from the repository.

In 1999, the culmination of years of scientific and technical advancements and careful regulatory review resulted in EPA and NRC proposals for new regulations specific to a repository at Yucca Mountain based on state-of-the-art science and regulatory standards.[59] Since section 113(c) of the NWPA directed DOE to focus its site characterization activities on those necessary to evaluate the suitability of the site for a license application to the NRC, the proposed changes to the EPA and NRC rules in turn required DOE to propose modifications to its criteria and methodology for determining the suitability of the Yucca Mountain site. Accordingly, DOE proposed new state-of-the-art Yucca-Mountain-specific site suitability Guidelines consistent with NRC licensing regulations.[60] After EPA and NRC finalized their revisions,[61] DOE promptly finalized its own.[62] For the reasons explained in the National Academy of Sciences study, the revised Guidelines' focus on the performance of the total repository system also makes them a better tool for protection of public safety than the old Guidelines, since the old subsystem approach might have resulted in a repository whose subsystems performed better in one or another respect but whose total performance in protecting human health was inferior.

In short, far from seeking to manipulate its siting Guidelines to fit the site, DOE had no choice but to amend its Guidelines to conform with the new regulatory framework established at Congress's direction by the National Academy of Sciences, the EPA, and the NRC. Moreover, this framework represents the culmination of a carefully considered set of regulatory decisions initiated at the direction of the Congress of the United States and completed nine years

[55] Summary information about progress in testing is provided to the NRC twice each year. There are 23 Semiannual Progress Reports available, covering all testing for the Yucca Mountain site. These documents include references to numerous technical reports of the Program, which number in the thousands.

[56] Technical Bases for Yucca Mountain Standards, National Academy of Sciences, National Research Council, 1995.

[57] Ibid.

[58] Ibid.

[59] Disposal of High-Level Radioactive Wastes in a Proposed Geological Repository at Yucca Mountain, Nevada, Proposed Rule, 64 FR 8640, February 22, 1999; Environmental Radiation Protection Standards for Yucca Mountain, Nevada, Proposed Rule, 64 FR 46975, August 27, 1999.

[60] General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories, Yucca Mountain Site Suitability Guidelines, 64 FR 67054, November 30, 1999.

[61] Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada, Final Rule, 66 FR 32073, June 13, 2001; Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada; Final Rule, 66 FR 55732, November 2, 2001.

[62] General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories, Yucca Mountain Site Suitability Guidelines, Final Rule, 66 FR 57303, November 14, 2001.

later, in which top scientists in the country have participated, and in which expert regulatory authorities, the NRC and the EPA, have played the leading role. These authorities likewise agree that the new regulatory framework, of which the Department's revised Guidelines are a necessary part, forms a coherent whole well designed to protect the health and safety of the public.

9.4. Assertion 4: The Process Tramples States' Rights

Some have argued that a Federal selection of siting disrespects states' rights. That is incorrect. Indeed, Nevada's interests have been accorded a place in Federal law to an extent seldom, if ever, seen before.

As provided by the NWPA, the State of Nevada has the right to veto any Presidential site recommendation. It may do so by submitting a notice of disapproval to Congress within 60 days of the President's action.

If Nevada submits a notice of disapproval, Congress has 90 calendar days of continuous session to override the notice by passing a resolution of siting designation. If it does not do so, the State's disapproval becomes effective.

The respect due Nevada has not stopped with grudging obedience to the statutory commands. Instead, as noted previously, the Department has held hearings over a range of dates and places well in excess of what reasonably could have been viewed as a statutory mandate. And I have taken full account of Governor Guinn's comment and those of Nevada's other elected officials who oppose this Project. Although they reflect a view I do not share, I will continue to accord them the highest degree of respect.

Finally, the Federal Government has appropriated more funds to Nevada to conduct its own Yucca Mountain studies than any other State has ever been given for any remotely similar purpose. Since the start of the Program in 1983, the State of Nevada has received over $78 million in oversight funding. Since 1989, when the affected units of local government requested oversight funding, they have received over $67 million. In total, the State of Nevada and the affected units of local government have received over $145 million over that timeframe; with Nye County, home to Yucca Mountain, receiving over $22 million and Clark County, home to Las Vegas, receiving about $25 million. In addition, over the last 10 years, the State of Nevada and the affected units of local government have been given over $73 million to compensate for taxes they would have collected on the site characterization and the development and operation of a repository if they were legally authorized to tax activities of the Federal Government. Nye County has also conducted its own oversight drilling program since 1996, for which over that time Nye has received almost $21 million. Thus, the grand total that has been awarded to the state and its local governments simply on account of Yucca Mountain research has been nearly $240 million.

Given the extensive evidence that the state has been, and will be, accorded a degree of involvement and authority seldom if ever accorded under similar circumstances, it is my judgment that the assertion of an infringement on state's rights is incorrect.

9.5. Assertion 5: Transportation of Nuclear Materials Is Disruptive and Dangerous

Critics have argued that transporting wastes to Yucca Mountain is simply too dangerous, given the amount involved and the distances that will need to be traversed, sometimes near population centers.

These concerns are not substantiated for three principal reasons. First, they take no account of the dangers of *not* transporting the wastes and leaving them to degrade and/or accumulate in their present, temporary facilities. Second, they pay no heed to the fact that, if the Yucca Mountain repository is not built, some wastes that would have been bound for that location will have to be transported elsewhere, meaning that our real choice is not between transporting or not transporting, but between transporting with as much planning and safety as possible, or transporting with such organization as the moment might invite. And third, they ignore the remarkable record of safe transportation of nuclear materials that our country has achieved over more than three decades.

The first point is not difficult to understand. The potential hazards of transporting wastes are made to appear menacing only by ignoring the potential hazards of leaving the material where it is—at 131 aging surface facilities in 39 states. Every ton of waste not transported for five or ten minutes near a town on the route to Yucca Mountain is a ton of waste left sitting in or near someone else's town—and not for five or ten minutes but indefinitely. Most of the wastes left where they are in or near dozens of towns (and cities) continue to accumulate day-by-day in temporary facilities not intended for long-term storage or disposal.

The second point is also fairly simple. Many of these older sites have reached or will soon reach pool storage limits. Over 40 are projected to need some form of dry storage by 2010. Additional facilities will therefore be required. There are real limits, however, to how many of these can realistically be expected to be built on site. Many utilities do not have the space available to build them, and are likely to face major regulatory hurdles in attempting to acquire it.

Therefore one way or another, unless all these reactors shut down, off-site storage facilities will need to be built, substantial amounts of waste will have to be transported there, and this will happen not in the distant future but quite soon. For example, today nuclear utilities and a Native American tribe in Utah are working toward construction of an "interim" storage facility on tribal land. Whether or not this effort ultimately succeeds, it is likely that some similar effort will. Thus, if we are merely to keep our present supply of nuclear energy, at some fast-approaching point there will be transportation of nuclear wastes. The only question is whether we will have (a) numerous supplemental storage sites springing up, with transportation to them arranged ad hoc, or (b) one permanent repository, with transportation to it arranged systematically and with years of advance planning. The second alternative is plainly preferable, making the Yucca Mountain plan superior on this ground alone.

Finally, transportation of nuclear waste is not remotely the risky venture Yucca's critics seek to make it out to be. Over the last 30 years, there have been over 2,700 shipments of spent nuclear fuel. Occasional traffic accidents have occurred, but there has not been one identifiable injury related to radiation exposure because of them. In addition, since 1975, or since the last stages of the war in Vietnam, national security shipments have traveled over 100 million miles—more than the distance from here to the sun—with no accidents causing a fatality or harmful release of radioactive material.[63]

Our safety record is comparable to that in Europe, where nuclear fuel has been transported extensively since 1966.[64] Over the last 25 years, more than 70,000 MTU (an amount roughly equal to what is expected to be shipped over the entire active life of the Yucca Mountain Project) has been shipped in approximately 20,000 casks. France and Britain average 650 shipments per year, even though the population density in each of those countries grossly exceeds that of the United States.

Even so, we need not, and should not, be content to rest upon the record of the past no matter how good. For transportation to Yucca Mountain, the Department of Transportation has established a process that DOE and the states must use for evaluating potential routes. Consistent with Federal regulations, the NRC would approve all routes and security plans and would certify transportation casks prior to shipment.

In short, for all these reasons, I have concluded that the stated concerns about transportation are ill-founded and should not stand in the way of taking the next step toward designation of the Yucca Mountain site.

9.6. Assertion 6: Transportation of Wastes to the Site Will Have a Dramatically Negative Economic Impact on Las Vegas

There have been repeated assertions that shipments of radioactive waste through the Las Vegas valley could have effects on the local, entertainment-based, economy. Such effects could include, for example, discouraging tourism and lowering property values. These assertions are largely unsupportable by any evidence and are addressed in the Final Environmental Impact Statement.

Much of what has been said in the preceding section applies here as well. The record speaks for itself. In addition to the history of safe shipment on interstate highways through relatively open spaces, five metric tons of spent nuclear fuel from 27 countries have, over the last 16 years, been transported without incident through

[63] About the Transportation Safeguards System, Office of Transportation Safeguards Fact Sheet.

[64] Presentation by Ronald Pope, Head of Transport Safety Unit for the Internal Atomic Energy Agency, at 13th International Symposium for Packing of Radioactive Materials 2001, Chicago, IL, September 2001.

Concord, California, and Charleston, South Carolina (the latter, like Las Vegas, a tourist destination). There is no reason to believe that a similar safe record will not be achieved in Nevada.

The truth of it is that many tourists coming to Las Vegas will be farther from nuclear sites when they get there than when they left home. All major nuclear power generation facilities in the United States are located near large metropolitan centers in order to minimize the amount of power lost during transmission. It is thus not surprising that more than 161 million Americans are closer to a commercial nuclear facility than anyone in Las Vegas is to Yucca Mountain, as shown in Table 4. Indeed there are few large metropolitan centers that do not have a major nuclear facility located within 75 miles.[65]

TABLE 4.—U.S. POPULATION IN CONTIGUOUS UNITED STATES LIVING WITHIN VARIOUS DISTANCES OF COMMERCIAL NUCLEAR FACILITIES

State	Zone (miles from facilities)				
	0–25	25–50	50–75	0–50	0–75
AL	327,488	617,283	452,817	944,771	1,397,588
AR	91,993	159,544	859,399	251,537	1,110,936
AZ	25,803	1,550,878	1,608,816	1,576,682	3,185,497
CA	2,488,467	8,666,094	11,962,159	11,154,561	23,116,719
CO	(1)	(1)	(1)	(1)	(1)
CT	962,725	2,394,573	55,292	3,357,298	3,412,590
DC	.....	153,634	418,425	153,634	572,059
DE	457,523	184,324	123,438	641,847	765,285
FL	1,135,427	2,865,538	3,550,098	4,000,965	7,551,063
GA	186,028	886,879	1,145,585	1,072,907	2,218,491
IA	512,517	566,867	474,723	1,079,384	1,554,107
ID	(1)	(1)	(1)	(1)	(1)
IL	2,068,321	7,970,381	835,971	10,038,701	10,874,673
IN	34,431	945,514	468,802	979,945	1,448,747
KS	19,797	161,268	686,554	181,065	867,619
KY.					
LA	786,052	1,592,771	772,888	2,378,823	3,151,710
MA	740,668	4,346,548	1,275,039	5,087,217	6,362,255
MD	438,958	2,528,095	2,007,566	2,967,053	4,974,619
ME	151,828	521,691	280,266	673,520	953,785
MI	898,433	3,815,786	2,491,128	4,714,219	7,205,346
MN	450,935	2,999,162	330,754	3,450,097	3,780,850
MO	72,929	393,186	952,824	466,115	1,418,939
MS	36,411	169,211	561,585	205,622	767,207
MT.					
NC	1,864,567	2,265,107	2,577,799	4,129,674	6,747,239
ND.					
NE	564,594	181,950	379,944	746,544	1,126,488
NH	278,528	649,119	188,301	927,646	1,115,947
NJ	795,512	5,628,139	2,023,890	6,423,650	8,447,540
NM	(1)	(1)	(1)	(1)	(1)
NV.					
NY	1,866,267	9,017,732	5,435,801	10,883,999	16,319,800
OH	656,156	2,790,959	2,074,628	3,447,115	5,521,743
OK	.....	.....	5,479	.....	5,479
OR	45,053	1,381,995	432,829	1,427,047	1,859,876
PA	3,206,819	6,437,719	1,564,624	9,644,538	11,209,162
RI	19,252	284,282	744,786	303,534	1,048,320
SC	705,470	1,760,435	747,457	2,465,906	3,213,363
SD	.....	.....	569	.....	569
TN	532,368	456,157	927,261	988,525	1,915,786
TX	136,390	1,337,035	3,766,243	1,473,425	5,239,668
UT	(1)	(1)	(1)	(1)	(1)
VA	597,715	2,377,308	2,221,770	2,975,024	5,196,794
VT	54,257	43,739	77,319	97,996	175,315
WA	331,397	500,577	585,734	831,974	1,417,708
WI	542,083	2,065,518	1,646,584	2,607,601	4,254,185
WV	43,813	65,183	37,095	108,996	146,090
WY.					
Grand Total	24,126,975	80,732,181	56,752,239	104,859,156	161,651,160
Proposed Repository at Yucca Mountain: Population around Yucca Mountain	1,678	13,084	19,069	14,762	33,831

[1] State with no commercial facilities but with other nuclear facilities depending on a repository for waste disposition.

[65] It is noteworthy that Atlantic City has three reactor sites closer than 75 miles at the same time its tourism-based economy has been expanding. Yucca Mountain, by contrast, would be one of the few nuclear facilities in the country in a remote area with no metropolitan center within 75 miles.

As shown in Table 5, 22 of the 30 most populous metropolitan areas in the United States have 36 operating nuclear reactors closer to them than a waste repository at Yucca Mountain would be to Las Vegas, some 90 miles distant.

TABLE 5.—TOP 30 METROPOLITAN AREAS IN CONTIGUOUS U.S. BY POPULATION—DISTANCE TO NEAREST COMMERCIAL POWER REACTOR

[Does not include other nuclear facilities that are dependent on a high-level repository for waste disposition]

Rank	Area name	Population 2000 Census (note 1)	Major population centers	State	Nearest commercial nuclear reactor	Distance (miles) (note 4)
1	New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA (Note 2).	21,199,865	New York	NY	Indian Point	45.0
			Jersey City	NJ	Indian Point	44.4
2	Los Angeles-Riverside-Orange County, CA CMSA.	16,373,645	Los Angeles	CA	San Onofre	61.5
			Riverside	CA	San Onofre	41.2
3	Chicago-Gary-Kenosha, IL–IN–WI CMSA.	9,157,540	Chicago	IL	Zion	44.9
			Rockford	IL	Byron	17.7
4	Washington-Baltimore, DC–MD–VA–WV CMSA.	7,608,070	Baltimore	MD	Peach Bottom	43.0
			Washington, DC	DC	Calvert Cliffs	51.2
5	San Francisco-Oakland-San Jose, CA CMSA.	7,039,362	San Francisco	CA	Rancho Seco	81.3
			Oakland	CA	Rancho Seco	73.3
			San Jose	CA	Rancho Seco	81.8
6	Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA.	6,188,463	Philadelphia	PA	Limerick	34.1
7	Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA.	5,819,100	Boston	MA	Pilgrim	45.2
			Worcester	MA	Vermont Yankee	60.3
8	Detroit-Ann Arbor-Flint, MI CMSA	5,456,428	Detroit	MI	Fermi	30.4
9	Dallas-Fort Worth, TX CMSA	5,221,801	Dallas	TX	Comanche Peak	69.3
			Fort Worth	TX	Comanche Peak	41.7
10	Houston-Galveston-Brazoria, TX CMSA.	4,669,571	Houston	TX	South Texas Project	82.7
11	Atlanta, GA MSA (Note 3)	4,112,198	Atlanta	GA	Sequoyah	121.7
12	Miami-Fort Lauderdale, FL CMSA	3,876,380	Fort Lauderdale	FL	Turkey Point	57.9
			Miami	FL	Turkey Point	29.6
13	Seattle-Tacoma-Bremerton, WA CMSA.	3,554,760	Seattle	WA	Trojan	111.4
			Tacoma	WA	Trojan	86.4
14	Phoenix-Mesa, AZ MSA	3,251,876	Glendale	AZ	Palo Verde	40.4
			Scottsdale	AZ	Palo Verde	56.3
			Phoenix	AZ	Palo Verde	45.8
			Tempe	AZ	Palo Verde	55.2
			Mesa	AZ	Palo Verde	60.2
			Chandler	AZ	Palo Verde	59.4
15	Minneapolis-St. Paul, MN–WI MSA	2,968,806	Minneapolis	MN	Monticello	39.1
			Saint Paul	MN	Prairie Island Station	34.2
16	Cleveland-Akron, OH CMSA	2,945,831	Cleveland	OH	Perry	39.3
			Akron	OH	Perry	59.3
17	San Diego, CA MSA	2,813,833	San Diego	CA	SAN ONOFRE	50.7
18	St. Louis, MO–IL MSA	2,603,607	Saint Louis	MO	Callaway	91.7
19	Denver-Boulder-Greeley, CO CMSA	2,581,506	Denver	CO	Fort Calhoun	495.6
20	Tampa-St. Petersburg-Clearwater, FL MSA.	2,395,997	Tampa	FL	Crystal River	81.9
21	Pittsburgh, PA MSA	2,358,695	Pittsburgh	PA	Beaver Valley	29.6
22	Portland-Salem, OR–WA CMSA	2,265,223	Portland	OR	Trojan	37.2
23	Cincinnati-Hamilton, OH–KY–IN CMSA.	1,979,202	Cincinnati	OH	Davis Besse	206.8
24	Sacramento-Yolo, CA CMSA	1,796,857	Sacramento	CA	Rancho Seco	26.1
25	Kansas City, MO–KS MSA	1,776,062	Kansas City	MO	Wolf Creek	88.2
			Kansas City	KS	Wolf Creek	87.0
26	Milwaukee-Racine, WI CMSA	1,689,572	Milwaukee	WI	Zion	44.2
27	Orlando, FL MSA	1,644,561	Orlando	FL	Crystal River	98.7
28	Indianapolis, IN MSA	1,607,486	Indianapolis	IN	Clinton	156.5
29	San Antonio, TX MSA	1,592,383	San Antonio	TX	South Texas Project	161.3
30	Norfolk-Virginia Beach-Newport News, VA–NC MSA.	1,569,541	Newport News	VA	Surry	23.2
			Virginia Beach	VA	Surry	53.4
			Norfolk	VA	Surry	37.3

[1] Populations from 2000 Census data for Continental USA.
[2] CMSA means "Consolidated Metropolitan Statistical Area".
[3] MSA means "Metropolitan Statistical Area".
[4] Distances shown are relative to a central feature such as a city hall, county seat, or capitol building.

Many cities with strong tourism industries are located closer to existing storage facilities than Las Vegas would be to a repository at Yucca Mountain. Therefore, those who assert that a repository 90 miles from Las Vegas would have dramatically negative effects on local tourism have the burden of producing strong evidence to back up their claims. They have not done so. Thus, I know of no reason

to believe that there is any compelling argument that the Las Vegas economy would be harmed by a repository at Yucca Mountain.

9.7. Assertion 7: It Is Premature for DOE To Make a Site Recommendation for Various Reasons

9.7.1. The General Accounting Office Has Concluded That It Is Premature for DOE To Make a Site Recommendation Now

The GAO did make this statement in its draft report, Technical, Schedule, and Cost Uncertainties of the Yucca Mountain Repository Project, which was prematurely released.[66] After receiving the Department's response, however, in the final version of this report, released in December 2001, GAO expressly acknowledged that "the Secretary has the discretion to make such a recommendation at this time."[67]

9.7.2. DOE Is Not Ready To Make a Site Recommendation Now Because DOE and NRC Have Agreed on 293 Technical Items That Need To Be Completed Before DOE Files a License Application

The Nuclear Regulatory Commission provided a sufficiency letter to DOE on November 13, 2001, that concluded that existing and planned work, upon completion, would be sufficient to apply for a construction authorization. The agreed upon course of action by DOE and the NRC is intended to assist in the license application phase of the project, not site recommendation. In consultation with the Nuclear Regulatory Commission staff concerning licensing, DOE agreed it would obtain certain additional information relating to nine "key technical issues" to support license application. The DOE agreed to undertake 293 activities that would assist in resolution of these issues.

The NRC has never stated that this was work that DOE needed to complete before site recommendation. In fact, it went out of its way not to do so. The Commission is well aware that section 114(a)(1)(E) of the NWPA requires a Secretarial recommendation of Yucca Mountain to be accompanied by a letter from the Commission providing its preliminary comments on the sufficiency of the information the Department has assembled for a construction license application. Had it been of the view that site recommendation should not proceed, its preliminary views would have stated that this information is not sufficient and that the Commission has no confidence that it ever will be.

Instead, in its section 114(a)(1)(E) letter, the Commission said the opposite: "[T]he NRC believes that sufficient at-depth characterization analysis and waste form proposal information, although not available now, will be available at the time of a potential license application such that development of an acceptable license application is achievable" (emphasis added). It also listed the outstanding issues as "closed pending," meaning that the NRC staff has confidence that DOE's proposed approach, together with the agreement to provide additional information, acceptably addresses the issue so that no information beyond that provided or agreed to would likely be required for a license application.

The DOE has completed over one-third of the actions necessary to fulfill the 293 agreements and has submitted the results to the NRC for review. The NRC has documented 23 of these as "complete." The remaining work consists largely of documentation (improve technical positions and provide additional plans and procedures) and confirmation (enhance understanding with additional testing or analysis or additional corroboration of data or models).

As I explained earlier, the NWPA makes clear that site recommendation is an intermediate step. The filing of a construction license application is the step that comes after site recommendation is complete. It is entirely unsurprising that the Department would have to do additional work before taking that next step. But the fact that the next step will require additional work is no reason not to take this one.

9.7.3. It Is Premature for DOE To Make a Recommendation Now Because DOE Cannot Complete This Additional Work Until 2006. The NWPA Requires DOE To File a License Application Within 90 Days of the Approval of Site Designation

When Congress enacted the NWPA in 1982, it included in the Act a series of deadlines that represented its best judgment regarding how long various steps should take. These deadlines included the 90-day provision referenced above. They also included a requirement that DOE begin disposing of waste in 1998, in the expectation that a repository would by then have been built and licensed.

Obviously, the timeframes set in the Act have proven to be optimistic. That is no reason, however, for the Department not to honor what was plainly their central function: to move along as promptly and as responsibly as possible in the development of a repository. Accordingly, to read the 90-day provision at issue as a basis for proceeding more slowly stands the provision on its head.

Our current plans call for filing a license application at the end of 2004, not 2006. Assuming Congressional action on this question this year, that would mean that DOE could be two years late in filing the application. But any delay in site recommendation will only result in further delay in the filing of this application. For the reasons explained in section 7, I believe I have the information necessary to allow me to determine that the site is scientifically and technically suitable, and I have so determined. That being so, I am confident that I best honor the various deadlines set out in the Act, including the central 1998 deadline (already passed) specifying when the Department was to begin waste disposal, by proceeding with site recommendation as promptly as I can after reaching this conclusion.

10. Conclusion

As I explained at the outset of this document, the Nuclear Waste Policy Act vests responsibilities for deciding how this country will proceed with regard to nuclear waste in a number of different Federal and state actors. As Secretary of Energy, I am charged with making a specific determination: whether to recommend to the President that Yucca Mountain be developed as the site for a repository for spent fuel and high-level radioactive wastes. I have endeavored to discharge that responsibility conscientiously and to the best of my ability.

The first question I believe the law asks me to answer is whether the Yucca Mountain site is scientifically and technically suitable for development as a repository. The amount and quality of research the Department of Energy has invested into answering this question—done by top-flight people, much of it on the watch of my predecessors from both parties—is nothing short of staggering. After careful evaluation, I am convinced that the product of over 20 years, millions of hours, and four billion dollars of this research provides a sound scientific basis for concluding that the site can perform safely during both the pre- and post-closure periods, and that it is indeed scientifically and technically suitable for development as a repository.

Having resolved this fundamental question, I then turned to a second set of considerations: are there compelling national interests that warrant proceeding with this project? I am convinced that there are, and that a repository for nuclear waste at Yucca Mountain will advance, in important ways, our energy security, our national security, our environmental goals, and our security against terrorist attacks.

Finally, I examined the arguments that opponents of the project have advanced for why we should not proceed. I do not believe any of them is of sufficient weight to warrant following a different course.

Accordingly, I have determined to recommend to the President that he find Yucca Mountain qualified for application for a construction authorization before the Nuclear Regulatory Commission, and that he recommend it for development of a repository.

[FR Doc. 02–4440 Filed 2–26–02; 8:45 am]
BILLING CODE 6450–01–P

[66] Nuclear Waste: Technical, Schedule, and Cost Uncertainties of the Yucca Mountain Repository Project, Unpublished Draft.

[67] Nuclear Waste: Technical, Schedule, and Cost Uncertainties of the Yucca Mountain Repository Project, GAO–02–191, December 21, 2001.

Federal Register

Wednesday,
February 27, 2002

Part III

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Deutsche Bank, AG, et al.; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10924, et al.]

Proposed Exemptions; Deutsche Bank, AG, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG (DB)

Located in Germany, with Affiliates in New York, New York and Other Locations

[Exemption Application No. D–10924]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) the lending of securities to:

(1) Deutsche Banc Alex. Brown, Inc., its successors or affiliates (DBAB);

(2) any current or future affiliate of DB,[2] that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940, that is supervised by the U.S. or a state, any broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"), or any foreign affiliate that is a bank or broker-dealer that is supervised by (1) the Securities and Futures Authority ("SFA") in the United Kingdom; (2) the Deutsche Bundesbank and/or the Federal Banking Supervisory Authority, *i.e.*, das Bundesaufsichtsamt fuer das Kreditwesen (the "BAK") in Germany; (3) the Ministry of Finance ("MOF") and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission, the Investment Dealers Association and/or the Office of Superintendent of Financial Institutions in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) the Reserve Bank of Australia or the Australian Securities and Investments Commission and/or Australian Stock Exchange Limited in Australia (the branches and/or affiliates in the six enumerated foreign countries hereinafter referred to as the "Foreign Affiliates") and together with the U.S. branches or affiliates (individually, "Affiliated Borrower" and collectively, "Affiliated Borrowers"), by employee benefit plans, including commingled investment funds holding plan assets (the Client Plans or Plans),[3] for which DB or an affiliate acts as securities lending agent or subagent (the "DB Lending Agent")[4] and also may serve as

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of FERSA and the Code.

[2] Any reference to DB shall be deemed to include any successors thereto.

[3] The common and collective trust funds trusteed, custodied, and/or managed by DB or an affiliate, and in which Client Plans invest, are referred to herein as "Commingled Funds." The Client Plan separate accounts trusteed, custodied, and/or managed by DB or an affiliate are referred to herein as "Separate Accounts." Commingled Funds and Separate Accounts are collectively referred to herein as "Lender" or "Lenders."

[4] DB or an affiliate may be retained by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, DB's role parallels that under the lending transactions for which DB or an affiliate acts as a primary securities lending agent on behalf of its clients. References to DB's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent and references to the Client Plans should be deemed to include those plans for which the DB Lending Agent is acting as a sub-agent with respect to securities lending,

trustee, custodian or investment manager of securities being lent; and

(b) the receipt of compensation by the DB Lending Agent in connection with these transactions.

Section II—Conditions

Section I of this exemption applies only if the conditions of Section II are satisfied. For purposes of this exemption, any requirement that the approving fiduciary be independent of the DB Lending Agent or the Affiliated Borrower shall not apply in the case of an employee benefit plan sponsored and maintained by the DB Lending Agent and/or an affiliate for its own employees (a DB Plan) invested in a Commingled Fund, provided that at all times the holdings of all DB Plans in the aggregate comprise less than 10% of the assets of the Commingled Fund.

(a) For each Client Plan, neither the DB Lending Agent nor any affiliate (except as expressly permitted herein) has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan.

This paragraph (a) will be deemed satisfied notwithstanding that the DB Lending Agent exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund managed by the DB Lending Agent in which Client Plans invest.

(b) Any arrangement for the DB Lending Agent to lend securities is approved in advance by a Plan fiduciary who is independent of the DB Lending Agent (the Independent Fiduciary).

(c) The specific terms of the securities loan agreement (the Loan Agreement) are negotiated by the DB Lending Agent which acts as a liaison between the Lender and the Affiliated Borrower to facilitate the securities lending transaction. In the case of a Separate Account, the Independent Fiduciary of a Client Plan approves the general terms of the Loan Agreement between the Client Plan and the Affiliated Borrower as well as any material change in such Loan Agreement. In the case of a Commingled Fund, approval is pursuant to the procedure described in paragraph (i), below.

(d) The terms of each loan of securities by a Lender to an Affiliated Borrower are at least as favorable to such Separate Account or Commingled Fund as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan, in the case of a Separate Account, may terminate the lending agency or sub-agency arrangement at any time, without penalty, on five business days notice. A Client Plan in the case of a Commingled Fund may terminate its participation in the lending arrangement by terminating its investment in the Commingled Fund no later than 35 days after the notice of termination of participation is received, without penalty to the Plan, in accordance with the terms of the Commingled Fund. Upon termination, the Affiliated Borrowers will transfer securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Separate Account or, if the Plan's withdrawal necessitates a return of securities, to the Commingled Fund, within:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan, in a Separate Account, or by the DB Lending Agent, as lending agent to a Commingled Fund, and the Affiliated Borrowers, whichever is least.

(f) The Separate Account, Commingled Fund or another custodian designated to act on behalf of the Client Plan, receives from each Affiliated Borrower (either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than DB (or any subsequent parent corporation of the DB Lending Agent) or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981) (PTE 81–6) (as it may be amended or superseded) (collectively, the Collateral). The Collateral will be held on behalf of a Client Plan in a depository account separate from the Affiliated Borrower.

(g) The market value (or in the case of a letter of credit, a stated amount) of the Collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Separate Account or the Commingled Fund in which the Client Plan has invested a continuing security interest in, and a lien on or title to, the Collateral. The level of the Collateral is monitored daily by the DB Lending Agent. If the market value of the Collateral, on the close of trading on a business day, is less than 100 percent of the market value of the loaned securities at the close of business on that day, the Affiliated Borrower is required to deliver, by the close of business on the next day, sufficient additional Collateral such that the market value of the Collateral will again equal 102 percent.

(h)(1) For a Lender that is a Separate Account, prior to entering into a Loan Agreement, the applicable Affiliated Borrower furnishes its most recently available audited and unaudited statements to the DB Lending Agent which will, in turn, provide such statements to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable Affiliated Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, the DB Lending Agent will not make any further loans to the Affiliated Borrower unless an Independent Fiduciary of the Client Plan in a Separate Account is provided notice of any material change and approves the continuation of the lending arrangement in view of the changed financial condition.

(2) For a Lender that is a Commingled Fund, the DB Lending Agent will furnish upon reasonable request to an Independent Fiduciary of each Client Plan invested in the Commingled Fund the most recently available audited and unaudited financial statements of the applicable Affiliated Borrower prior to authorization of lending, and annually thereafter.

(i) In the case of Commingled Funds, the information described in paragraph (c) (including any information with respect to any material change in the arrangement) shall be furnished by the DB Lending Agent as lending fiduciary to the Independent Fiduciary of each Client Plan whose assets are invested in the Commingled Fund, not less than 30 days prior to implementation of the arrangement or material change to the lending arrangement as previously described to the Client Plan, and

unless otherwise specifically indicated or by the context of the reference.

thereafter, upon the reasonable request of the Client Plan's Independent Fiduciary. In the event of a material adverse change in the financial condition of an Affiliated Borrower, the DB Lending Agent will make a decision, using the same standards of credit analysis the DB Lending Agent would use in evaluating unrelated borrowers, whether to terminate existing loans and whether to continue making additional loans to the Affiliated Borrower.

In the event any such Independent Fiduciary submits a notice in writing within the 30 day period provided in the preceding paragraph to the DB Lending Agent, as lending fiduciary, objecting to the implementation of, material change in, or continuation of the arrangement, the Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received. In the case of a Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw. In the case of a Plan whose assets are proposed to be invested in the Commingled Fund subsequent to the implementation of the arrangement, the Plan's investment in the Commingled Fund shall be authorized in the manner described in paragraph (c).

(j) In return for lending securities, the Lender either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash Collateral. (Under such circumstances, the Lender may pay a loan rebate or similar fee to the Affiliated Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's length transaction with an unrelated party.)

(k) Except as otherwise expressly provided herein, all procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTE 81–6 and Prohibited Transaction Exemption 82–63 (46 FR 14804, April 6, 1982) (PTE 82–63), both as amended or superseded, as well as to applicable securities laws of the United States, the United Kingdom, Canada, Australia, Switzerland, Japan and Germany.

(l) DB agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with an Affiliated Borrower so that the Client Plans do not have to litigate (*e.g.*, in the case of Deutsche Bank AG, London Branch) in a foreign jurisdiction nor sue to realize on the indemnification. Such indemnification is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plans may incur or suffer, arising from any impermissible use by an Affiliated Borrower of the loaned securities, from an event of default arising from the failure of an Affiliated Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or from an Affiliated Borrower's other failure to comply with the terms of such agreement, except to the extent that such losses are caused by the Client Plan's own negligence.

If any event of default occurs, to the extent that (i) liquidation of the pledged Collateral or (ii) additional cash received from the Affiliated Borrower does not provide sufficient funds on a timely basis, the DB Lending Agent, as securities lending agent, promptly and at its own expense (subject to rights of subrogation in the Collateral and against such Affiliated Borrower) will purchase or cause to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as discussed above). If the Collateral and any such additional cash is insufficient to accomplish such purchase, DB, pursuant to the indemnification, indemnifies the Client Plan invested in a Separate Account or Commingled Fund for any shortfall in the Collateral plus interest on such amount and any transaction costs incurred (including attorney's fees). Alternatively, if such replacement securities cannot be obtained in the open market, DB pays the Lender the difference in U.S. dollars between the market value of the loaned securities and the market value of the related Collateral as determined on the date of the Affiliated Borrower's breach of the obligation to return the securities pursuant to the applicable Loan Agreement.

(m) The Lender receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including but not limited to all interest and dividends on the loaned securities, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(n) Prior to any Client Plan's approval of the lending of its securities to any Affiliated Borrower, a copy of the final exemption (if granted) and this notice of proposed exemption is provided to the Client Plan.

(o) The Independent Fiduciary of each Client Plan that is invested in a Separate Account is provided with (including by electronic means) quarterly reports with respect to the securities lending transactions, including, but not limited to, the information described in Representation 24 of the Summary of Facts and Representations, and the certification of an auditor selected by the DB Lending Agent who is independent of the DB Lending Agent (but may or may not be independent of the Client Plan) that the loans appear no less favorable to the Lender than the pricing established in the schedule described in Representation 16, so that the Independent Fiduciary may monitor such transactions with the Affiliated Borrower. The Independent Fiduciary of a Client Plan invested in a Commingled Fund will receive the auditor's certification and, upon request, will also receive the quarterly report.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Affiliated Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangement with the DB Lending Agent, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan

Asset Regulation, which entity is engaged in securities lending arrangements with the DB Lending Agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(q) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Lenders will be to borrowers unrelated to the DB Lending Agent.

(r) In addition to the above, all loans involving foreign Affiliated Borrowers have the following requirements:

(1) The foreign Affiliated Borrower is a bank, supervised either by a state or the United States, a broker-dealer registered under the Securities Exchange Act of 1934 or a bank or broker-dealer that is supervised by (1) the SFA in the United Kingdom; (2) the BAK in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission, the Investment Dealers Association and/or the Office of Superintendent of Financial Institutions in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) the Reserve Bank of Australia or the Australian Securities and Investments Commission and/or Australian Stock Exchange Limited in Australia;

(2) The foreign Affiliated Borrower is in compliance with all applicable provisions of Rule 15a–6 under the Securities Exchange Act of 1934 (17 CFR 240.15a–6)(Rule 15a–6) which provides foreign broker-dealers a limited exemption from United States registration requirements;

(3) All Collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit (unless an applicable exemption provides otherwise);

(4) All Collateral is held in the United States and the situs of the securities lending agreements is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1 related to the lending of securities; and

(5) Prior to a transaction involving a foreign Affiliated Borrower, the foreign Affiliated Borrower—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees that enforcement by a Client Plan of the indemnity provided by DB may occur in the United States courts.

(s) The DB Lending Agent maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the DB Lending Agent and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than the DB Lending Agent or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of the DB Lending Agent or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) *DB Plan:* An ERISA covered employee benefit plan sponsored and maintained by the DB Lending Agent and/or an affiliate for its own employees.

(b) *Index Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by the DB Lending Agent or an affiliate, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which the DB Lending Agent or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Department's Plan Asset Regulation; and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit the DB Lending Agent or its affiliate or any party in which the DB Lending Agent or its affiliate may have an interest.

(c) *Model-Driven Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by the DB Lending Agent or an affiliate, in which one or more investors invest, and—

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of the DB Lending Agent or an affiliate, to transform an Index;

(2) which contains "plan assets" subject to the Act, pursuant to the Department's Plan Asset Regulation; and

(3) that involves no agreement, arrangement or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit the DB Lending Agent, any affiliate of the DB Lending Agent, or any party in which the DB Lending Agent or any affiliate may have an interest.

(d) *Index:* a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers;

(2) the index is created and maintained by an organization independent of DB; and

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of the DB Lending Agent or an affiliate.

Summary of Facts and Representations

1. Deutsche Bank AG (hereafter referred to as either "DB" or "the Applicant") is a German banking corporation. DB is a leading commercial bank which provides a wide range of banking, fiduciary, record-keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. DB is one of the largest financial institutions in the world in terms of assets. As of calendar year 2001, total assets of DB were 928,994 million Euros. Shareholders equity equaled 43,683 million Euros. DB manages over $585 billion in assets either through collective trusts, separately managed accounts or mutual funds.

Outside the United States, DB, as a whole, is not supervised by a state or by the United States. However, DB is regulated and supervised globally by the BAK in cooperation with the Deutsche Bundesbank (the "Bundesbank").[5] The BAK is a federal institution with ultimate responsibility to the German Ministry of Finance. The Bundesbank is the central bank of the Federal Republic of Germany and an integral part of the European Central Banks. The BAK supervises the operations of banks, banking groups, financial holding groups and foreign bank branches in Germany, and has the authority to (a) issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct investigations, and (d) intervene in cases of inadequate capital or liquidity endangered deposits, or bankruptcy by temporarily prohibiting certain banking transactions. The BAK ensures that DB has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAK. The supervisory authorities require information on the condition of DB and its branches through periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The supervisory authorities also require information from DB regarding capital adequacy, country risk exposure, and foreign exchange (FX) exposures. German banking law mandates penalties to ensure correct reporting to the supervisory authorities, and auditors face penalties for gross violations of their duties.

Additionally, the BAK in cooperation with the Bundesbank supervises all branches of DB, wherever located, subjecting them to announced and unannounced on-site audits, and all other supervisory controls applicable to German banks. With respect to branches located in the European Economic Area ("EEA") member states,[6] such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with applicable international agreements, memoranda of understanding, or other arrangements with the relevant foreign supervisory authorities.[7]

DB's subsidiaries that pursue banking and other financial activities (other than insurance) or activities that are closely related thereto are consolidated with DB and form a "banking group" for purposes of the capital ratios and the large exposure limits that the bank is required to meet also on a group-wide basis. In conformity the European Directives,[8] the BAK supervises such banking groups (where their parent institution is domiciled in Germany) on a consolidated basis. While oversight is less individualized for subsidiaries than for branches, the supervision extends to adequacy of equity capital of banking and financial holding groups and compliance with the regulations regarding large loans granted by such groups. Thus, DB is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.[9]

Bankers Trust Company, a wholly-owned subsidiary of DB, is a New York banking corporation and a leading commercial bank, providing a wide range of banking and related services to various entities, including employee benefit plans and other institutional investors. Bankers Trust Company, and other affiliates or branches of the Applicant, advise various portfolios subject to ERISA that are invested in

[5] In addition, Deutsche Bank AG, New York Branch, is regulated and supervised by the New York State Banking Department. Certain activities of Deutsche Bank's New York branch are also regulated and supervised by the Federal Reserve Bank of New York. Bankers Trust Company, an indirect wholly-owned subsidiary of DB, is a New York State bank and a member of the Federal Reserve System.

[6] DB's branches domiciled outside the EEA are also subject to local regulation and supervision by the host country's supervisory authority, *e.g.*, the MOF in Japan, the Swiss Federal Banking Commission in Switzerland, the Australian Prudential Regulation Authority in Australia, and the Office of the Superintendent of Financial Institutions in Canada. For DB's branches domiciled in EEA member states, the BAK is the lead supervisory authority pursuant to the rules on the "European passport," and only some aspects are subject to complementary supervision by the host country's supervisory authority (*e.g.*, the Securities and Futures Authority in the United Kingdom supervises the conduct of the investment business of DB in the United Kingdom).

[7] As a result of meetings between the U.S. and German Regulators in October 1993, the U.S. Department of Treasury has accorded national treatment to German bank branches, and the German Ministry of Finance has granted relief to branches of U.S. banks in Germany, in particular with respect to "dotation" or endowment capital requirements and capital adequacy standards. Since the German Banking Act (s. 53c) allows such exemptions only insofar as branches of German companies are afforded equal exemptions in the foreign state, this confirms indirectly the recognition of the German banking supervisory standards by the U.S. regulators. Thus, with respect to capital adequacy, each government has agreed to accept the capital adequacy requirements of the other for foreign banks doing business in the other's jurisdiction.

[8] *See, e.g.*, Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis, Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit.

[9] This is also the conclusion reached by the Board of Governors of the Federal Reserve System in its Order approving DB's application to become a bank holding company, effective May 20, 1999.

certain Index or Model-Driven Funds (collectively, Indexed Accounts) that are, respectively, designed to either track or transform an independently maintained securities index. Currently, securities in those portfolios may be lent to banks and broker-dealers that are not DB affiliates through the DB securities lending program.[10]

2. The Applicant seeks an exemption to permit it, through its branches and affiliates (including bank subsidiaries and affiliated broker-dealers) in the United States, Canada, Japan, Switzerland, Australia, Germany and the United Kingdom (i.e., Affiliated Borrowers) to borrow securities from Indexed Accounts under the conditions described herein. For purposes of this proposed exemption, an Affiliated Borrower will be any bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940, that is supervised by the U.S. or state, any broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"), or any foreign affiliate of Bankers Trust Company that is a bank or broker-dealer that is supervised by (1) the SFA in the United Kingdom; (2) the BAK in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission, the Investment Dealers Association and/or the Office of Superintendent of Financial Institutions in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) the Reserve Bank of Australia or the Australian Securities and Investments Commission and/or Australian Stock Exchange Limited in Australia (*i.e.*, the Foreign Affiliates).

Branches and/or affiliates in the enumerated countries include: Deutsche Bank AG, London Branch; Deutsche Securities Limited, Tokyo Branch, Japan Bankers Trust, Ltd. and Deutsche Bank AG, Tokyo Branch; DB in Germany; Deutsche Bank AG, Sydney Branch; Deutsche Bank Canada and Deutsche Bank Securities Limited; and Deutsche Bank (Suisse) S.A. The Applicant and its affiliates actively engage in the borrowing and lending of securities, with daily outstanding loan volume averaging billions of dollars. The Affiliated Borrowers utilize borrowed securities to satisfy their trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time.

The Applicant currently offers through various affiliates, including Bankers Trust Company, more than 20 collective investment funds that are invested according to the criteria of various third-party indexes or are model-driven based on such indexes (*i.e.*, Index or Model-Driven Funds). For example, some funds track the Russell 2000 Index, while other funds track the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index). The Index or Model-Driven Funds pertinent to this requested exemption track, among others, indices of foreign securities such as the MSCI EAFE, the DAX or the Kokosai Index.[11] Most of the Funds track stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indexes.[12]

In addition to Index or Model-Driven Funds that are collective investment funds, DB or an affiliate may have investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third-party index or a model based on that index. Such separately managed accounts and collective investment funds are also referred to herein as Indexed Accounts.

3. The securities lending transactions that would be covered by this proposed exemption will be initiated for an Indexed Account, as a Lender described herein, by a DB Lending Agent, following disclosure to the Client Plans of the borrower's affiliation with the DB Lending Agent.

The Applicant represents that the DB Plans will only use the exemption to the extent that the DB Plan is invested in a Commingled Fund with respect to which, at all times, the holdings of all DB Plans in the aggregate comprise less than 10% of the assets of the Commingled Fund. Non-DB Plan Separate Accounts will participate.

The Applicant represents that at all times, the DB Lending Agent will effect loans in a prudent and diversified manner. While the DB Lending Agent will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, the Applicant represents that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance, where (a) the credit limit established for such borrower by the DB Lending Agent and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as an Affiliated Borrower by the particular Lender whose securities are sought to be borrowed; (c) the borrower and the DB Lending Agent have negotiated rates more advantageous to the Lender than the rates other borrowers have offered; or (d) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different DB Lending Agent representatives at or about the same time with respect to the same security. In situations (a) and (b) above, loans would normally be effected with the "second in line." In situation (c) above, this may mean that the "first in line" borrower receives the next lending opportunity. In situation (d) above, securities would be allocated equitably among all eligible borrowers.

4. Except as described herein in connection with Index and Model-Driven Funds managed by the DB Lending Agent, the Applicant represents that neither the DB Lending Agent nor any affiliate will have discretionary authority or control with regard to the investment of the assets of Client Plans involved in the transaction or will render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions regarding a Client Plan's acquisition or disposition of securities available for loan.

The plan assets for which the DB Lending Agent, to a limited extent, exercises discretionary authority or control or renders investment advice and which will be available for lending to the Affiliated Borrowers will be limited to those invested in Index and Model-Driven Funds. All procedures for lending securities will be designed to comply with the applicable conditions

[10] In this regard, the Department granted a class exemption known as Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981; as amended at 52 FR 18754, May 19, 1987) to provide relief from section 406(a) of the Act for loans of securities to borrowers who are not affiliated with the entity that is the investment manager of the affected plan or that provides investment advice for the plan with respect to the assets being loaned. PTE 81–6 does not provide relief for loans to any entities that are affiliates of the plans' lending agent. The Department also granted certain individual exemptions, known as PTE 98–23 (63 FR 29435, May 29, 1998)) and PTE 99–50 (65 FR 534, January 5, 2000), to provide relief for loans to certain affiliates of DB, but not in connection with loans of securities over which DB or an affiliate has investment discretion (*e.g.*, assets held in the Indexed Accounts).

[11] Morgan Stanley maintains the MSCI ("Morgan Stanley Composite Index") EAFE and Kokosai indexes. The DAX (Deutsche Aktienindex) is maintained by the Deutsche Boerse, a German stock exchange.

[12] The indexes of debt securities used for the Funds, such as the Lehman Brothers Bond Index, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. The Applicant currently has several debt Index Funds.

of PTE 81–6 [13] and PTE 82–63,[14] as amended or superseded, except as described herein.

5. The Applicant represents that any arrangement for the DB Lending Agent to lend securities will be approved in advance by a Plan fiduciary who is independent of the DB Lending Agent. In addition, the Client Plan will acknowledge the relationship between the DB Lending Agent and the Affiliated Borrowers. However, all conditions described herein that require an independent Plan fiduciary will not, in the case of a DB Plan, require that the fiduciary be independent of the DB Lending Agent or the Affiliated Borrower.

6. When acting as a direct securities lending agent, the DB Lending Agent, pursuant to authorization from its client, will negotiate the terms of loans to Affiliated Borrowers and otherwise act as a liaison between the Lender (and its custodian) and the Affiliated Borrower. As lending agent, the DB Lending Agent will have the responsibility for monitoring receipt of all collateral required, marking such collateral to market daily to ensure adequate levels of collateral can be maintained, monitoring and evaluating the performance and creditworthiness of borrowers, and, if authorized by a client, holding and investing cash collateral pursuant to given investment guidelines. The DB Lending Agent may also act as trustee, custodian and/or investment manager for the Client Plan.

The DB Lending Agent, as securities lending agent for the Lenders, will negotiate a master securities borrowing agreement with a schedule of modifications attached thereto (Loan Agreement) with the Affiliated Borrowers, as is the case with all borrowers. The Loan Agreement will specify, among other things, the right of the Lender to terminate a loan at any time and the Lender's rights in the event of any default by the Affiliated Borrowers. The Loan Agreement will set forth the basis for compensation to the Lender for lending securities to the Affiliated Borrowers under each category of collateral. The Loan Agreement will also contain a requirement that the Affiliated Borrowers must pay all transfer fees and transfer taxes related to the securities loans.

7. With respect to Lenders who are Separate Accounts, as direct lending agent, the DB Lending Agent will, prior to lending the Client Plan's securities, enter into an agreement (Client Agreement) with the Client Plan, signed by a fiduciary of the Client Plan who is independent of the DB Lending Agent and the Affiliated Borrowers. The Client Agreement will, among other things, describe the operation of the lending program, disclose the form of the securities loan agreement to be entered into on behalf of the Client Plan with borrowers, identify the securities which are available to be lent, and identify the required collateral and the required daily marking-to-market. The Client Agreement will also set forth the basis and rate of the DB Lending Agent's compensation for the performance of securities lending and cash collateral investment services. The Client Plan may terminate the Client Agreement at any time, without penalty, on no more than five business days notice.

The Client Agreement will contain provisions to the effect that if any Affiliated Borrower is designated by the Client Plan as an approved borrower, the Client Plan will acknowledge the relationship between the Affiliated Borrower and the DB Lending Agent. The DB Lending Agent will represent to the Client Plan that each and every loan made to the Affiliated Borrower on behalf of the Client Plan will be effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16.

8. When the DB Lending Agent is lending agent with respect to a Commingled Fund, the DB Lending Agent will, prior to the investment of a Client Plan's assets in such Commingled Fund, obtain from the Client Plan authorization to lend any securities held by the Commingled Fund to brokers and other approved borrowers, including the Affiliated Borrowers. Prior to obtaining such approval, the DB Lending Agent will provide a written description of the operation of the lending program (including the basis and rate of the DB Lending Agent's compensation for the performance of securities lending and cash collateral investment services), disclose the form of the securities loan agreement to be entered into on behalf of the Commingled Fund with the borrowers, identify the securities which are available to be lent, and identify the required collateral and the required daily marking-to-market.[15] If the Client Plan objects to the arrangement, it will be permitted to withdraw from the Commingled Fund, without penalty, no later than 35 days after the notice of withdrawal is received.

In addition, the Client Plan will acknowledge the relationship between the DB Lending Agent and the Affiliated Borrowers, and the DB Lending Agent will represent that each and every loan made to the Affiliated Borrowers by the Commingled Fund will be effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16.

9. When the DB Lending Agent is lending securities under a sub-agency arrangement, before the Plan participates in the securities lending program, the primary lending agent will enter into a securities lending agency agreement (Primary Lending Agreement) with a fiduciary of the Client Plan who is independent of such primary lending agent, the DB Lending Agent, and the Affiliated Borrowers. The primary lending agent also will be unrelated to the DB Lending Agent and the Affiliated Borrowers. The Primary Lending Agreement will contain provisions substantially similar to those in the Client Agreement relating to: the description of the lending program, use of an approved form of securities loan agreement, specification of the securities to be lent, specification of the required collateral margin and the requirement of daily marking-to-market, and provision of a list of approved borrowers (which will include one or more of the Affiliated Borrowers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents (including the DB Lending Agent) to facilitate performance of securities lending agency functions. The Primary Lending Agreement will expressly disclose that the DB Lending Agent is to

[13] As noted earlier, PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c)(1) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein), or to a bank.

[14] PTE 82–63 provides an exemption under certain conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

[15] The DB Lending Agent may make transmittals required by the exemption to Plan fiduciaries via authorized recordkeepers. The DB Lending Agent represents that all decisions reserved to fiduciaries under the terms of the exemption will be made by the fiduciaries and never by the recordkeeper on behalf of the fiduciary.

act in a sub-agency capacity. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains (including the DB Lending Agent) pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (Sub-Agency Agreement) with the DB Lending Agent under which the primary lending agent will retain and authorize the DB Lending Agent, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions specified in the Primary Lending Agreement. The DB Lending Agent represents that the Sub-Agency Agreement will contain provisions that are in substance comparable to those described above in connection with a Client Agreement in situations where the DB Lending Agent is the primary lending agent. The DB Lending Agent will make in the Sub-Agency Agreement the same representations described above in paragraph 7 with respect to arm's length dealing with the Affiliated Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for the DB Lending Agent's compensation to be paid by the primary lending agent.

10. In all cases, the DB Lending Agent will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Affiliated Borrowers are effected at arm's length terms, and in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16. Such records will be made available upon reasonable request and without charge to the Client Plan fiduciary, who (other than in the case of a DB Plan) is independent of the DB Lending Agent and the Affiliated Borrowers, in the manner and format agreed to by the Client Plan fiduciary and the DB Lending Agent.

11. A Lender, in the case of a Separate Account, will be permitted to terminate the lending agency or sub-agency arrangement at any time without penalty, on five business days notice. A Client Plan in the case of a Commingled Fund will be permitted to terminate its participation in the lending arrangement by terminating its investment in the Commingled Fund no later than 35 days after the notice of termination of participation is received, without penalty to the Plan, in accordance with the terms of the Commingled Fund. Upon a termination, the Affiliated Borrower will be contractually obligated to return securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Lender within one of the following time periods, whichever is least: the customary delivery period for such securities, five business days of written notification of termination, or the time negotiated for such delivery by the Client Plan, in a Separate Account, or by the DB Lending Agent, as lending agent to a Commingled Fund, and the Affiliated Borrowers.

Because the securities must be returned before the end of the customary delivery period for sale of those securities, the DB Lending Agent need not wait to sell the securities as long as it has the contractual assurance that they will be returned before settlement. Consequently, the lending has no impact on the investment decision to sell or its implementation and, therefore, no effect on tracking error vis-a-vis the relevant index.

12. The Lender, or another custodian designated to act on its behalf, will receive collateral from each Affiliated Borrower by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower. All collateral will be received by the Lender or other custodian in the United States. The collateral will consist of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank other than DB (or any subsequent parent corporation of the DB Lending Agent) or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended or superseded). The collateral will be held on behalf of a Client Plan in a depository account separate from the Affiliated Borrower.

The market value (or, in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Lender a continuing security interest in and a lien on or title to the collateral. The DB Lending Agent will monitor the level of the collateral daily. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (or such greater percentage as agreed to by the parties) of the market value of the loaned securities at the close of business on that day, the DB Lending Agent will require the Affiliated Borrowers to deliver by the close of business on the next day sufficient additional collateral to bring the level back to at least 102 percent.

13. Prior to making any loans under the Loan Agreement from Separate Accounts, the Affiliated Borrowers will furnish their most recent available audited and unaudited financial statements to the DB Lending Agent, which will provide such statements to the Client Plan invested in such Separate Account before the authorizing fiduciary of the Client Plan is asked to approve the proposed lending to the Affiliated Borrowers. The terms of the Loan Agreement will contain a requirement that the Affiliated Borrowers must give prompt notice to the DB Lending Agent at the time of any loan of any material adverse change in their financial condition since the date of the most recently furnished financial statements. If any such material adverse change has taken place, the DB Lending Agent will request that the independent fiduciary of the Client Plan, if invested in a Separate Account, approve continuation of the lending arrangement in view of the changed financial conditions.

In addition, upon request, the DB Lending Agent will provide the audited financial statements of the applicable Affiliated Borrowers to Client Plans invested in Commingled Funds on an annual basis.

14. In the case of Client Plans currently invested in Commingled Funds, approval of lending to the Affiliated Borrowers will be accomplished by the following special procedure for Commingled Funds. The information described in paragraph 8 will be furnished by the DB Lending Agent as lending fiduciary to an independent fiduciary of each Client Plan invested in Commingled Funds not less than 30 days prior to implementation of the lending arrangement, and thereafter, upon the reasonable request of the authorizing fiduciary. In the event any such authorizing fiduciary submits a notice in writing within the 30-day period to the DB Lending Agent, in its capacity as the lending fiduciary, objecting to the implementation of or continuation of the lending arrangement with the Affiliated Borrowers, the Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Commingled Fund,

without penalty to the Plan, no later than 35 days after the notice of withdrawal is received. In the case of a Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw. In the case of a Plan whose assets are proposed to be invested in a Commingled Fund subsequent to the implementation of the arrangement, the Plan's investment in the Commingled Fund shall be authorized in the manner described in paragraph 8.

In the case of loans made by Commingled Funds, upon notice by the Affiliated Borrower to the DB Lending Agent of a material adverse change in its financial conditions, the DB Lending Agent will make a decision whether to terminate existing loans and whether to continue making additional loans to the Affiliated Borrower, using the same standards of credit analysis the DB Lending Agent would use in evaluating unrelated borrowers. In the event the Plan invested in a Commingled Fund has any objection to the continuation of lending to an Affiliated Borrower, it may withdraw from the fund as described above.

15. With respect to material changes in the lending arrangement with the Affiliated Borrowers after approval by Client Plans, the DB Lending Agent will obtain approval from Client Plans (whether in Separate Accounts or Commingled Funds) prior to implementation of any such change. For those Client Plans invested in Commingled Funds, approval of the proposed material change will be by the procedure described in paragraph 14.

16. In return for lending securities, the Lender either will receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral. Under such circumstances, the Lender may pay a loan rebate or similar fee to the Affiliated Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's length transaction with an unrelated party.

In this regard, each time a Lender loans securities to an Affiliated Borrower pursuant to the Loan Agreement, the DB Lending Agent will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The fee or rebate payable for each loan will be effected at arm's-length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described below. The rebate rates, which are established for cash collateralized loans made by the Lender, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds (typically the U.S. Federal Funds rate established by the Federal Reserve System), the overnight "repo" rate, or the like and the anticipated investment returns on the investment of cash collateral. Further, the lending fees with respect to loans collateralized by other than cash will be set daily to reflect conditions as influenced by potential market demand. The Applicant represents that the securities lending agent fee paid to the DB Lending Agent will comply with the requirements of PTE 82–63.

The DB Lending Agent will establish each day a written schedule of lending fees [16] and rebate rates [17] with respect to new loans of designated classes of securities, such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and non-U.S. equities, in order to assure uniformity of treatment among borrowers and to limit the discretion the DB Lending Agent would have in negotiating securities loans to Affiliated Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which are more advantageous to the Lenders. The Applicant represents that in no case will loans be made to Affiliated Borrowers at rates or lending fees that are less advantageous to the Lenders than those on the relevant schedules. In addition, it is represented that the method of determining the daily securities lending rates (fees and rebates) will be disclosed to each Client Plan, whether in Separate Accounts or Commingled Funds. For those Client Plans invested in Commingled Funds, disclosure will be by the special procedure described in paragraph 14.

17. When a loan of securities by a Lender is collateralized with cash, the DB Lending Agent will transfer such cash to the trust or other investment vehicle for investment that the Client Plan has authorized, and will rebate a portion of the earnings on such collateral to the appropriate Affiliated Borrower as agreed to in the securities lending agreement between Lender and the Borrower. The DB Lending Agent will share with the Client Plan the income earned on the investment of cash collateral for the DB Lending Agent's provision of lending services, which will reduce the income earned by the Client Plans (whether in a Commingled Fund or Separate Account) from the lending of securities. The DB Lending Agent may receive a separate management fee for providing cash collateral investment services. Where collateral other than cash is used, the Affiliated Borrower will pay a fee to the Lender based on the value of the loaned securities. These fees will also be shared between the Client Plans (whether in a Commingled Fund or Separate Account) and the DB Lending Agent. Any income or fees shared will be net of cash collateral management fees and borrower rebate fees. The sharing of income and fees will be in accordance with the arrangements authorized by the Client Plan in advance of commencement of the lending program.

An authorizing fiduciary of the Client Plan also may authorize the DB Lending Agent to act as investment manager, custodian, and/or directed trustee of the Client Plan's Index or Model-Driven portfolio of securities available for lending whether in a Separate Account or Commingled Fund, and to receive a reasonable fee for such services.

18. The DB Lending Agent will negotiate rebate rates for cash collateral payable to each borrower, including Affiliated Borrowers, on behalf of a Lender. The fees or rebate rates negotiated will be effected at arm's length terms, and in no case will be less favorable to the Client Plan than the

[16] The DB Lending Agent will adopt minimum daily lending fees for non-cash collateral payable by Affiliated Borrowers to the DB Lending Agent on behalf of a Lender. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. The DB Lending Agent will submit the method for determining such minimum daily lending fees to an authorizing fiduciary of the Client Plan, in the case of a Separate Account, for approval before initially lending any securities to Affiliated Borrowers on behalf of such Client Plan. The DB Lending Agent will submit the method for determining such minimum daily lending fees to an authorizing fiduciary of each Client Plan involved in or planning to invest in a Commingled Fund pursuant to the procedure described in paragraph 14, above.

[17] Separate maximum daily rebate rates will be established with respect to loans of securities within the designated classes identified above. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. The DB Lending Agent will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to an Affiliated Borrower on behalf of the Client Plan.

pricing established according to the schedule described in paragraph 16.

With respect to any loan to an Affiliated Borrower, the DB Lending Agent, at the inception of such loan, will not negotiate and agree to a rebate rate with respect to such loan which it expects would produce a zero or negative return to the Lender over the life of the loan (assuming no default on the investments made by the DB Lending Agent where it has investment discretion over the cash collateral or on investments expected to be made by the Client Plan's designee, where the DB Lending Agent does not have investment discretion over cash collateral).

19. The DB Lending Agent may, depending on market conditions, reduce the lending fee or increase the rebate rate on any outstanding loan to an Affiliated Borrower, or any other borrower. Except in the case of a change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated, such reduction in lending fee or increase in rebate shall not establish a lending fee below the minimum or a rebate above the maximum set in the schedule of fees and rebates described in paragraph 16. If the DB Lending Agent reduces the lending fee or increases the rebate rate on any outstanding loan from a Separate Account to an Affiliated Borrower (except in the case of a change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), the DB Lending Agent, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan invested in the Separate Account with notice (including by electronic means) that it has reduced such fee or increased the rebate rate to such Affiliated Borrower and that the Client Plan may terminate such loan at any time.

20. Except as otherwise expressly provided in the exemption, the Applicant represents that all procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63, both as amended or superseded, as well as to applicable securities laws of the United States and the United Kingdom.

21. DB agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with the Affiliated Borrower so that the Lender does not have to litigate, in the case of a foreign Affiliated Borrower, in a foreign jurisdiction, nor sue to realize on the indemnification. Such indemnification will be against any and all reasonably foreseeable losses, costs and expenses (including attorneys fees) which the Lender may incur or suffer arising from any impermissible use by an Affiliated Borrower of the loaned securities, from an event of default arising from the failure of an Affiliated Borrower to deliver loaned securities when due in accordance with the provisions of the Loan Agreement or from an Affiliated Borrower's other failure to comply with the terms of the Loan Agreement, except to the extent that such losses are caused by the Client Plan's own negligence. The applicable Affiliated Borrower will also be liable to the Lender for breach of contract for any failure by such Borrower to deliver loaned securities when due or to otherwise comply with the terms of the Loan Agreement.

If any event of default occurs to the extent that (i) liquidation of the pledged collateral or (ii) additional cash received from the Affiliated Borrower does not provide sufficient funds on a timely basis, the DB Lending Agent, as securities lending agent, promptly and at its own expense, shall purchase or cause to be purchased for the account of the Lender, securities identical to the borrowed securities (or their equivalent). If the collateral and any such additional cash is insufficient to accomplish such purchase, DB, pursuant to the indemnification, will indemnify the Lender for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorneys' fees). Alternatively, if such replacement securities cannot be obtained in the open market, DB will pay the Lender the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral as determined on the date of the Affiliated Borrower's breach of the obligation to return the securities pursuant to the applicable Loan Agreement.

The "market value" of any securities listed on a national securities exchange in the United States will be the last sales price on such exchange on the preceding business day or, if there is no sale on that day, the last sale price on the next preceding business day on which there is a sale on such exchange, as quoted on the consolidated tape. If the principal market for securities to be valued is the over-the-counter market, the securities' market value will be the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ) on the preceding business day or the opening price on such business day if the securities are issues for which last sale prices are not quoted on NASDAQ. If the securities to be valued are not quoted on NASDAQ, their market value shall be the highest bid quotation appearing in The Wall Street Journal, National Quotation Bureau pink sheets, Salomon Brothers quotation sheets, quotation sheets of registered market makers and, if necessary, independent dealers' telephone quotations on the preceding business day. (In each case, if the relevant quotation does not exist on such day, then the relevant quotation on the next preceding business day in which there is such a quotation would be the market value.)

22. The Lender will be entitled to receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including but not limited to, interest and dividends, shares of stock as a result of a stock split and rights to purchase additional securities, or other distributions during the loan period.[18]

23. Further, prior to a Client Plan's authorization of a securities lending program, the DB Lending Agent will provide a Plan fiduciary with copies of the final exemption (if granted) and this notice of proposed exemption.

24. In order to provide the means for monitoring lending activity in Separate Accounts and Commingled Funds, a quarterly report will be provided to an auditor selected by the DB Lending Agent who is independent of the DB Lending Agent (but may or may not be independent of the Client Plan). This report will show the fees or rebates (as applicable) on loans to Affiliated Borrowers compared with loans to other borrowers, as well as the level of collateral on the loans. The Applicant represents that the quarterly report will show, on a daily basis, the market value of all outstanding security loans to Affiliated Borrowers and to other borrowers as compared to the total collateral held for both categories of loans. Further, the quarterly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all borrowers

[18] The Applicant represents that dividends and other distributions on foreign securities payable to a Lender may be subject to foreign tax withholdings. Under these circumstances, the applicable Affiliated Borrower, where necessary, will gross-up the in-lieu-of-payment (in respect of such dividend or distribution it makes) to the Lender so that the Lender will receive back what it otherwise would have received (by way of dividend or distribution) had it not loaned the securities.

where cash is used as collateral. The quarterly report also will state, on a daily basis, the rates at which securities are loaned to Affiliated Borrowers compared with those at which securities are loaned to other borrowers.

The independent auditor will review the lending data on a quarterly basis and certify whether the loans have satisfied the criteria of this exemption, in that they appear no less favorable to the Separate Account or Commingled Fund than the pricing established in the schedule described in paragraph 16. Client Plans invested in Separate Accounts will receive both the quarterly report and the auditor's certification as described above. Client Plans invested in Commingled Funds will receive the auditor's certification and, upon request, will receive the quarterly report.

In the event an authorizing fiduciary of a Plan invested in a Commingled Fund submits a notice in writing to the DB Lending Agent objecting to the continuation of the lending program to the Affiliated Borrowers, the Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received.

25. To ensure that any lending of securities to an Affiliated Borrower will be monitored by an authorizing fiduciary of above average experience and sophistication in matters of this kind, only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the Affiliated Borrowers. However, in the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangement with the DB Lending Agent, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the DB Lending Agent, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity must have full investment responsibility with respect to plan assets invested therein, and must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. In addition, none of the entities described above may be formed for the sole purpose of making loans of securities.

26. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Lenders by the DB Lending Agent will be to borrowers unrelated to the DB Lending Agent. Thus, the competitiveness of the loan fee will be continuously tested in the marketplace. Accordingly, the Applicant believes that loans to Affiliated Borrowers should result in competitive fee income to the Lenders.

27. With respect to foreign Affiliated Borrowers, the Applicant represents that each such entity (*e.g.*, Deutsche Bank AG, London Branch and other affiliates in the United Kingdom) is regulated by the host country's supervisory authority (*e.g.*, the UK SFA) and is, therefore, authorized to conduct an investment banking business in and from the host country (*e.g.*, the United Kingdom) as a broker-dealer. The proposed exemption will be applicable only to transactions effected by a DB Lending Agent with an Affiliated Borrower which is registered as a broker-dealer with the host country's supervisory authority (the Foreign Authority) and in compliance with Rule 15a–6 under the Securities Exchange Act of 1934 (Rule 15a–6). The Applicant represents that the role of a broker-dealer in a principal transaction in each of the host countries (the United Kingdom, Germany, Japan, Canada, Switzerland and Australia) is substantially identical to that of a broker-dealer in a principal transaction in the United States. The Applicant further represents that registration of a broker-dealer with the Foreign Authority is equivalent to registration of a broker-dealer with the SEC under the 1934 Act. The Applicant maintains that the Foreign Authority has promulgated rules for broker-dealers which are equivalent to SEC rules relating to registration requirements, minimum capitalization, reporting requirements, periodic examinations, fund segregation, client protection, and enforcement. The Applicant represents that the rules and regulations set forth by the Foreign Authority and the SEC share a common objective: the protection of the investor by the regulation of securities markets. The Applicant explains that under each Foreign Authority's rules, a person who manages investments or gives advice with respect to investments must be registered as a "registered representative." If a person is not a registered representative and, as part of his duties, makes commitments in market dealings or transactions, that person must be registered as a "registered trader." The Applicant represents that the Foreign Authority's rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they fall due, and that the Foreign Authority's rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition to demonstration of capital adequacy, the Applicant states that the Foreign Authority's rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and all records relating to a counterparty, and that all records must be produced at the request of the Foreign Authority at any time. The Applicant states that Foreign Authority's registration requirements for broker-dealers are backed up by potential fines and penalties and rules which establish a comprehensive disciplinary system.

28. In addition to the protections afforded by registration with the Foreign Authority, the Applicant represents that the Affiliated Borrower will comply

with the applicable provisions of Rule 15a–6 (described below). The Applicant represents that compliance by the Affiliated Borrower with the requirements of Rule 15a–6 will offer additional protections in lieu of registration with the SEC. The Applicant represents that Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor", as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3 (21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, (b) the employee benefit plan has total assets in excess of $5,000,000, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term "major U.S. institutional investor" is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million, or is an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million. The Applicant represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicant represents that, under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with 15a–6 must, among other things:

a. Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

b. Provide the SEC with any information or documents within its possession, custody or control, any testimony of any foreign associated persons,[19] and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to Rule 15a–6; and

c. Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

1. Effect the transactions, other than negotiating their terms;

2. Issue all required confirmations and statements;

3. As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

4. Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

5. Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection-Reserves and Custody of Securities); and

6. Participate in all oral communications (e.g., telephone calls) between a foreign associated person and the U.S. institutional investor (other than a major U.S. institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major U.S. institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

All collateral will be maintained in United States dollars or U.S. dollar-denominated securities or letters of credit. All collateral will be held in the United States and the DB Lending Agent will maintain the situs of the Loan Agreements (evidencing the Lender's right to return of the loaned securities and the continuing interest in and lien on or title to the collateral) in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

Prior to a transaction involving a foreign Affiliated Borrower, the foreign Affiliated Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the Process Agent; and (d) agree that enforcement by a Client Plan of the indemnity provided by DB may occur in the United States Courts.

29. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

a. For each Client Plan, neither the DB Lending Agent nor any affiliate (except as expressly permitted in the exemption) will have or exercise discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction or will render investment advice with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan, except to the extent that the DB Lending Agent exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund managed by the DB Lending Agent in which Client Plans invest.

b. Any arrangement for the DB Lending Agent to lend securities will be approved in advance by a Plan fiduciary who (except in the case of a DB Plan) is independent of the DB Lending Agent.

c. The terms of each loan of securities by a Lender to an Affiliated Borrower will be at least as favorable to such Separate Account or Commingled Fund as those of a comparable arm's length transaction between unrelated parties.

d. Upon termination of a loan, the Affiliated Borrowers will transfer securities identical to the borrowed securities (or the equivalent thereof) to the Lender within one of the following time periods, whichever is least: (1) The customary delivery period for such securities; (2) five business days; or (3) the time negotiated for such delivery by the Client Plan, in a Separate Account, or by the DB Lending Agent, as lending agent to a Commingled Fund, and the Affiliated Borrowers.

e. The Lender will receive from each Affiliated Borrower collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable bank

[19] A foreign associated person is defined in Rule 15a–6(b)(2) as any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

letters of credit issued by a U.S. bank (other than DB or any subsequent parent corporation of the DB Lending Agent, or an affiliate thereof, or any combination thereof) or other collateral permitted under PTE 81–6 (as amended or superseded), which will be held in a depository account separate from the Affiliated Borrower.

f. In return for lending securities, the Lender either will receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral.

g. DB agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with an Affiliated Borrower so that the Client Plans do not have to litigate, in the case of a foreign Affiliated Borrower, in a foreign jurisdiction nor sue to realize on the indemnification.

h. All loans involving foreign Affiliated Borrowers will involve Affiliated Borrowers that are registered as broker-dealers subject to regulation by the Foreign Authority and that are in compliance with all applicable provisions of Rule 15a–6.

i. Prior to a transaction involving a foreign Affiliated Borrower, the foreign Affiliated Borrower will: agree to submit to the jurisdiction of the United States; agree to appoint a Process Agent in the United States; consent to service of process on the Process Agent; and agree that enforcement by a Client Plan of the indemnity provided by DB may occur in the United States courts.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number).

Barclays Global Investors, N.A. (BGI)

Located in San Francisco, California

[Exemption Application No. D–10925]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[20]

[20] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of FERSA and the Code.

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The lending of securities to:

(1) Barclays Capital Inc., its successors or affiliates (BC NY);

(2) Barclays Capital Securities Limited, its successors or affiliates (BC UK);

(3) Barclays Global Investor Services, its successors or affiliates (BGIS); and

(4) any future affiliate of BGI[21], subject to the regulatory requirements applicable to BC NY, BC UK and/or BGIS (individually, "Borrower" and collectively, "Borrowers"), which are domestic or foreign broker-dealers, by employee benefit plans, including commingled investment funds holding plan assets (the Client Plans or Plans)[22], for which BGI, an affiliate of the proposed Borrowers, acts as securities lending agent or subagent[23] and also may serve as trustee, custodian or investment manager of securities being lent; and

(b) the receipt of compensation by BGI in connection with these transactions.

Section II—Conditions

Section I of this exemption applies only if the conditions of Section II are satisfied. For purposes of this exemption, any requirement that the approving fiduciary be independent of BGI or the Borrower shall not apply in the case of a Barclays Plan invested in a Commingled Fund, provided that at all times, the holdings of all Barclays Plans in the aggregate comprise less than 10% of the assets of the Commingled Fund.

(a) For each Client Plan, neither BGI nor any affiliate (except as expressly permitted herein) has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan.

This paragraph (a) will be deemed satisfied notwithstanding that BGI exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund managed by BGI in which Client Plans invest.

(b) Any arrangement for BGI to lend securities is approved in advance by a Plan fiduciary who is independent of BGI (the Independent Fiduciary).

(c) The specific terms of the securities loan agreement (the Loan Agreement) are negotiated by BGI which acts as a liaison between the Lender and the Borrower to facilitate the securities lending transaction. In the case of a Separate Account, the Independent Fiduciary of a Client Plan approves the general terms of the Loan Agreement between the Client Plan and the Borrower as well as any material change in such Loan Agreement. In the case of a Commingled Fund, approval is pursuant to the procedure described in paragraph (i), below.

(d) The terms of each loan of securities by a Lender to a Borrower are at least as favorable to such Separate Account or Commingled Fund as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan, in the case of a Separate Account, may terminate the lending agency or sub-agency arrangement at any time, without penalty, on five business days notice. A Client Plan in the case of a Commingled Fund may terminate its participation in the lending arrangement by terminating its investment in the Commingled Fund no later than 35 days after the notice of termination of participation is received, without penalty to the Plan, in accordance with the terms of the Commingled Fund. Upon termination, the Borrowers will transfer securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Separate Account or, if the Plan's withdrawal necessitates a

[21] Any reference to BGI shall be deemed to include any successors thereto.

[22] The common and collective trust funds trusteed, custodied, and/or managed by BGI, and in which Client Plans invest, are referred to herein as "Commingled Funds." The Client Plan separate accounts trusteed, custodied, and/or managed by BGI are referred to herein as "Separate Accounts." Commingled Funds and Separate Accounts are collectively referred to herein as "Lender" or "Lenders."

[23] BGI may be retained by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, BGI's role parallels that under the lending transactions for which BGI acts as a primary securities lending agent on behalf of its clients. References to BGI's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent and references to the Client Plans should be deemed to include those plans for which BGI is acting as a sub-agent with respect to securities lending, unless otherwise specifically indicated or by the context of the reference.

return of securities, to the Commingled Fund, within:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan, in a Separate Account, or by BGI, as lending agent to a Commingled Fund, and the Borrowers, whichever is least.

(f) The Separate Account, Commingled Fund or another custodian designated to act on behalf of the Client Plan, receives from each Borrower (either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than Barclays Bank PLC (Barclays)(or any subsequent parent corporation of BGI, BC NY, BC UK and BGIS) or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981) (PTE 81–6) (as it may be amended or superseded) (collectively, the Collateral). The Collateral will be held on behalf of a Client Plan in a depository account separate from the Borrower.

(g) The market value (or in the case of a letter of credit, a stated amount) of the Collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Separate Account or the Commingled Fund in which the Client Plan has invested a continuing security interest in and a lien on or title to the Collateral. The level of the Collateral is monitored daily by BGI. If the market value of the Collateral, on the close of trading on a business day, is less than 100 percent of the market value of the loaned securities at the close of business on that day, the Borrower is required to deliver, by the close of business on the next day, sufficient additional Collateral such that the market value of the Collateral will again equal 102 percent.

(h) (1) For a Lender that is a Separate Account, prior to entering into a Loan Agreement, the applicable Borrower furnishes its most recently available audited and unaudited statements to BGI which will, in turn, provide such statements to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, BGI will not make any further loans to the Borrower unless an Independent Fiduciary of the Client Plan in a Separate Account is provided notice of any material change and approves the continuation of the lending arrangement in view of the changed financial condition.

(2) For a Lender that is a Commingled Fund, BGI will furnish upon reasonable request to an Independent Fiduciary of each Client Plan invested in the Commingled Fund the most recently available audited and unaudited financial statements of the applicable Borrower prior to authorization of lending, and annually thereafter.

(i) In the case of Commingled Funds, the information described in paragraph (c) (including any information with respect to any material change in the arrangement) shall be furnished by BGI as lending fiduciary to the Independent Fiduciary of each Client Plan whose assets are invested in the Commingled Fund, not less than 30 days prior to implementation of the arrangement or material change to the lending arrangement as previously described to the Client Plan, and thereafter, upon the reasonable request of the Client Plan's Independent Fiduciary. In the event of a material adverse change in the financial condition of a Borrower, BGI will make a decision, using the same standards of credit analysis BGI would use in evaluating unrelated borrowers, whether to terminate existing loans and whether to continue making additional loans to the Borrower.

In the event any such Independent Fiduciary submits a notice in writing within the 30 day period provided in the preceding paragraph to BGI, as lending fiduciary, objecting to the implementation of, material change in, or continuation of the arrangement, the Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received. In the case of a Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw. In the case of a Plan whose assets are proposed to be invested in the Commingled Fund subsequent to the implementation of the arrangement, the Plan's investment in the Commingled Fund shall be authorized in the manner described in paragraph (c).

(j) In return for lending securities, the Lender either'

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash Collateral. (Under such circumstances, the Lender may pay a loan rebate or similar fee to the Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's length transaction with an unrelated party.)

(k) Except as otherwise expressly provided herein, all procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTE 81–6 and Prohibited Transaction Exemption 82–63 (46 FR 14804, April 6, 1982) (PTE 82–63), both as amended or superseded, as well as to applicable securities laws of the United States and the United Kingdom.

(l) Barclays agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with a Borrower so that the Client Plans do not have to litigate, in the case of BC UK, in a foreign jurisdiction nor sue to realize on the indemnification. Such indemnification is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plans may incur or suffer, arising from any impermissible use by a Borrower of the loaned securities, from an event of default arising from the failure of a Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or from a Borrower's other failure to comply with the terms of such agreement, except to the extent that such losses are caused by the Client Plan's own negligence.

If any event of default occurs, to the extent that (i) liquidation of the pledged Collateral or (ii) additional cash received from the Borrower does not provide sufficient funds on a timely basis, BGI, as securities lending agent, promptly and at its own expense (subject to rights of subrogation in the Collateral and against such Borrower) will purchase or cause to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as

discussed above). If the Collateral and any such additional cash is insufficient to accomplish such purchase, Barclays, pursuant to the indemnification, indemnifies the Client Plan invested in a Separate Account or Commingled Fund for any shortfall in the Collateral plus interest on such amount and any transaction costs incurred (including attorney's fees). Alternatively, if such replacement securities cannot be obtained in the open market, Barclays pays the Lender the difference in U.S. dollars between the market value of the loaned securities and the market value of the related Collateral as determined on the date of the Borrower's breach of the obligation to return the securities pursuant to the applicable Loan Agreement.

(m) The Lender receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including but not limited to all interest and dividends on the loaned securities, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(n) Prior to any Client Plan's approval of the lending of its securities to any Borrower, a copy of this notice of proposed exemption, and, if granted, the final exemption, is provided to the Client Plan.

(o) The Independent Fiduciary of each Client Plan that is invested in a Separate Account is provided with (including by electronic means) quarterly reports with respect to the securities lending transactions, including, but not limited to, the information described in Representation 24 of the Summary of Facts and Representations, and the certification of an auditor selected by BGI who is independent of BGI (but may or may not be independent of the Client Plan) that the loans appear no less favorable to the Lender than the pricing established in the schedule described in Representation 16, so that the Independent Fiduciary may monitor such transactions with the Borrower. The Independent Fiduciary of a Client Plan invested in a Commingled Fund will receive the auditor's certification and, upon request, will also receive the quarterly report.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that —

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangement with BGI, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with BGI, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity.

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(q) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Lenders will be to borrowers unrelated to BGI.

(r) In addition to the above, all loans involving foreign Borrowers have the following requirements:

(1) The foreign Borrower is registered as a broker-dealer subject to regulation by the Securities and Futures Authority of the United Kingdom (the SFA);

(2) The foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 under the Securities Exchange Act of 1934 (17 CFR 240.15a–6)(Rule 15a–6) which provides foreign broker-dealers a limited exemption from United States registration requirements;

(3) All Collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit (unless an applicable exemption provides otherwise);

(4) All Collateral is held in the United States and the situs of the securities lending agreements is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1 related to the lending of securities; and

(5) Prior to a transaction involving a foreign Borrower, the foreign Borrower-

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees that enforcement by a Client Plan of the indemnity provided by Barclays may occur in the United States courts.

(s) BGI maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of BGI and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than BGI or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of

the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary. (t)(2) None of the persons described above in paragraphs (t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of BGI or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) *Barclays Plan:* An ERISA covered employee benefit plan sponsored and maintained by BGI and/or an affiliate for its own employees.

(b) *Index Fund*: Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI or an affiliate, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which BGI or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Department's Plan Asset Regulation; and, (4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit BGI or its affiliate or any party in which BGI or its affiliate may have an interest.

(c) *Model-Driven Fund*: Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI or an affiliate, in which one or more investors invest, and-(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of BGI or an affiliate, to transform an Index;

(2) which contains "plan assets" subject to the Act, pursuant to the Department's Plan Asset Regulation; and

(3) that involves no agreement, arrangement or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit BGI, any affiliate of BGI, or any party in which BGI or any affiliate may have an interest.

(d) *Index*: a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers;

(2) the index is created and maintained by an organization independent of Barclays; and

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of BGI.

Summary of Facts and Representations

1. The applicants are Barclays Global Investors, N.A. (BGI) and its affiliated companies Barclays Capital Inc. (BC NY), Barclays Capital Securities Limited (BC UK), and Barclays Global Investors Services (BGIS), all of which are subsidiaries of Barclays Bank PLC (Barclays), a financial services group based in the United Kingdom. Barclays is a full-line investment services group which is an authorized institution under the Banking Act of 1987 of the United Kingdom and is regulated by the Bank of England. As of December 2000, Barclays had total assets in excess of $472 billion.

BGI is a national bank headquartered in San Francisco, California. BGI serves as trustee, investment manager fiduciary and securities lending agent for employee benefit plans (Client Plans or Plans) invested in separate accounts or collective trust funds that hold plan assets on a commingled basis.[24] BGI also manages certain assets for the Federal Thrift Savings Plan established pursuant to the provisions of FERSA. BGI is a leader in "passive" investment strategies; the majority of its assets under management are invested in Index or Model-Driven Funds (as described more fully below). As of June 2001, BGI and its affiliates had over $771 billion in assets under management. Many of the Commingled Funds and Separate Accounts for which BGI acts as trustee and fiduciary engage in securities lending, with BGI acting as securities lending agent.

BC NY is a United Kingdom entity licensed in New York. It is an investment bank that customarily borrows securities in the ordinary course of its prime brokerage and equity finance businesses. BC NY is a registered broker-dealer under Section 15 of the Securities Exchange Act of 1934 (1934 Act).

BC UK is a broker-dealer located in London. BC UK also customarily borrows securities in the ordinary course of its business. BC UK is subject to regulation in the United Kingdom by the UK Securities and Futures Authority (SFA).

BGIS is located in San Francisco, California. BGIS is a registered broker-dealer under Section 15 of the 1934 Act. BGIS anticipates that in the future it will borrow securities in the ordinary course of its business.

2. The applicants represent that securities lending has become a common activity for institutional investors, including employee benefit plans, seeking to increase the return on their portfolios. Acting as principals, banks and broker-dealers borrow securities to satisfy their own needs or to re-lend to other entities wishing to borrow the securities. The lender generally requires that the loans of securities be fully collateralized by cash, U.S. Government securities, certain federal agency obligations or letters of credit. Where the collateral is cash, the lender or its agent generally invests the cash, and the lender retains a portion of the earnings on the cash collateral as its fee for lending the securities. Where non-cash collateral is used, the borrower pays a set fee directly to the lender.

Institutional investors often use the services of an agent in performing securities lending transactions. The lending agent is paid a fee for its services. Such fee may be a percentage of the income earned by the investor

[24] The common and collective trust funds trusteed, custodied, and/or managed by BGI, and in which Client Plans invest, are referred to herein as "Commingled Funds." The Client Plan separate accounts trusteed, custodied, and/or managed by BGI are referred to herein as "Separate Accounts." Commingled Funds and Separate Accounts are collectively referred to herein as "Lender" or "Lenders."

from lending its securities. The applicants represent that the essential functions of a securities lending agent are identifying appropriate borrowers of securities and negotiating the terms of loans to those borrowers. The agent also performs other services, such as monitoring the level of collateral and the value of loaned securities, and investing the cash collateral. The lending agent may receive a separate fee for the investment of cash collateral. The fee arrangement between BGI, as securities lending agent, and the Commingled Fund or the Client Plan in a Separate Account, is authorized by an independent Plan fiduciary.

BGI may provide services in several capacities for Client Plans, including trustee, custodian, securities lending agent, and/or investment manager. In connection with plan assets managed by BGI that are invested in Index and Model-Driven Funds, BGI exercises discretionary authority or control or renders investment advice with respect to such Funds, although BGI's discretion is effectively limited because of the nature of Index and Model-Driven Funds.[25] An Index Fund is one that is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities index by either (i) replicating the same combination of securities which compose such index or (ii) sampling the securities which compose such index based on objective criteria and data. A Model-Driven Fund is one which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of the investment manager, to transform an independently maintained securities index.

3. The applicants request an individual exemption for the lending of securities held in Commingled Funds or Separate Accounts to BC NY, BC UK, BGIS or any future affiliate of BGI subject to the regulatory requirements applicable to BC NY, BC UK and/or BGIS (individually, "Borrower" and collectively, "Borrowers"), by BGI as securities lending agent, following disclosure to the Client Plans of the Borrower's affiliation with BGI, and for the receipt of compensation by BGI in connection with such transactions.

The applicants represent that Plans sponsored and maintained by BGI and/or an affiliate for their own employees (Barclays Plans) will only use the exemption to the extent that the Barclays Plan is invested in a Commingled Fund with respect to which, at all times, the holdings of all Barclays Plans in the aggregate comprise less than 10% of the assets of the Commingled Fund. No Barclays Plan Separate Accounts will participate.

The applicants represent that at all times, BGI will effect loans in a prudent and diversified manner. While BGI will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, the applicants represent that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance, where (a) the credit limit established for such borrower by BGI and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Lender whose securities are sought to be borrowed; (c) the borrower and BGI have negotiated rates more advantageous to the Lender than the rates other borrowers have offered; or (d) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different BGI representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), this may mean that the "first in line" borrower receives the next lending opportunity. In situation (d), securities would be allocated equitably among all eligible borrowers.

4. Except as described herein in connection with Index and Model-Driven Funds managed by BGI, the applicants represent that neither BGI nor any affiliate will have discretionary authority or control with regard to the investment of the assets of Client Plans involved in the transaction or will render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions regarding a Client Plan's acquisition or disposition of securities available for loan.

The plan assets for which BGI, to a limited extent, exercises discretionary authority or control or renders investment advice and which will be available for lending to the Borrowers will be limited to those invested in Index and Model-Driven Funds. All procedures for lending securities will be designed to comply with the applicable conditions of Prohibited Transaction Exemption 81–6 (PTE 81–6)(46 FR 7527, January 23, 1981)[26] and Prohibited Transaction Exemption 82–63 (PTE 82–63)(46 FR 14804, April 6, 1982),[27] as amended or superseded, except as described herein.

5. The applicants represent that any arrangement for BGI to lend securities will be approved in advance by a Plan fiduciary who is independent of BGI. In addition, the Client Plan will acknowledge the relationship between BGI and the Borrowers. However, all conditions described herein that require an independent Plan fiduciary will not, in the case of a Barclays Plan, require that the fiduciary be independent of BGI or the Borrower.

6. When acting as a direct securities lending agent, BGI, pursuant to authorization from its client, will negotiate the terms of loans to Borrowers and otherwise act as a liaison between the Lender (and its custodian) and the Borrower. As lending agent, BGI will have the responsibility for monitoring receipt of all collateral required, marking such collateral to market daily to ensure adequate levels of collateral can be maintained, monitoring and evaluating the performance and creditworthiness of borrowers, and, if authorized by a client, holding and investing cash collateral pursuant to given investment guidelines. BGI may also act as trustee, custodian and/or investment manager for the Client Plan.

BGI, as securities lending agent for the Lenders, will negotiate a master securities borrowing agreement with a schedule of modifications attached thereto (Loan Agreement) with the Borrowers, as is the case with all borrowers. The Loan Agreement will specify, among other things, the right of the Lender to terminate a loan at any time and the Lender's rights in the event of any default by the Borrowers. The Loan Agreement will set forth the basis for compensation to the Lender for lending securities to the Borrowers under each category of collateral. The

[25] See Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds as published at 64 FR 70057 (Dec. 15, 1999).

[26] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c)(1) of the Code for the lending of securities that are assets or an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

[27] PTE 82–63 provides an exemption under certain conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

Loan Agreement will also contain a requirement that the Borrowers must pay all transfer fees and transfer taxes related to the securities loans.

7. With respect to Lenders who are Separate Accounts, as direct lending agent, BGI will, prior to lending the Client Plan's securities, enter into an agreement (Client Agreement) with the Client Plan, signed by a fiduciary of the Client Plan who is independent of BGI and the Borrowers. The Client Agreement will, among other things, describe the operation of the lending program, disclose the form of the securities loan agreement to be entered into on behalf of the Client Plan with borrowers, identify the securities which are available to be lent, and identify the required collateral and the required daily marking-to-market. The Client Agreement will also set forth the basis and rate of BGI's compensation for the performance of securities lending and cash collateral investment services. The Client Plan may terminate the Client Agreement at any time, without penalty, on no more than five business days notice.

The Client Agreement will contain provisions to the effect that if any Borrower is designated by the Client Plan as an approved borrower, the Client Plan will acknowledge the relationship between the Borrower and BGI and BGI will represent to the Client Plan that each and every loan made to the Borrower on behalf of the Client Plan will be effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16.

8. When BGI is lending agent with respect to a Commingled Fund, BGI will, prior to the investment of a Client Plan's assets in such Commingled Fund, obtain from the Client Plan authorization to lend any securities held by the Commingled Fund to brokers and other approved borrowers, including the Borrowers. Prior to obtaining such approval, BGI will provide a written description of the operation of the lending program (including the basis and rate of BGI's compensation for the performance of securities lending and cash collateral investment services), disclose the form of the securities loan agreement to be entered into on behalf of the Commingled Fund with the borrowers, identify the securities which are available to be lent, and identify the required collateral and the required daily marking-to-market.[28] If the Client Plan objects to the arrangement, it will be permitted to withdraw from the Commingled Fund, without penalty, no later than 35 days after the notice of withdrawal is received.

In addition, the Client Plan will acknowledge the relationship between BGI and the Borrowers, and BGI will represent that each and every loan made to the Borrowers by the Commingled Fund will be effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16.

9. When BGI is lending securities under a sub-agency arrangement, before the Plan participates in the securities lending program, the primary lending agent will enter into a securities lending agency agreement (Primary Lending Agreement) with a fiduciary of the Client Plan who is independent of such primary lending agent, BGI, and the Borrowers. The primary lending agent also will be unrelated to BGI and the Borrowers. The Primary Lending Agreement will contain provisions substantially similar to those in the Client Agreement relating to: the description of the lending program, use of an approved form of securities loan agreement, specification of the securities to be lent, specification of the required collateral margin and the requirement of daily marking-to-market, and provision of a list of approved borrowers (which will include one or more of the Borrowers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents (including BGI) to facilitate performance of securities lending agency functions. The Primary Lending Agreement will expressly disclose that BGI is to act in a sub-agency capacity. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains (including BGI) pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (Sub-Agency Agreement) with BGI under which the primary lending agent will retain and authorize BGI, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions specified in the Primary Lending Agreement. BGI represents that the Sub-Agency Agreement will contain provisions that are in substance comparable to those described above in connection with a Client Agreement in situations where BGI is the primary lending agent. BGI will make in the Sub-Agency Agreement the same representations described above in paragraph 7 with respect to arm's length dealing with the Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for BGI's compensation to be paid by the primary lending agent.

10. In all cases, BGI will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Borrowers are effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16. Such records will be made available upon reasonable request and without charge to the Client Plan fiduciary, who (other than in the case of a Barclays Plan) is independent of BGI and the Borrowers, in the manner and format agreed to by the Client Plan fiduciary and BGI.

11. A Lender, in the case of a Separate Account, will be permitted to terminate the lending agency or sub-agency arrangement at any time without penalty, on five business days notice. A Client Plan in the case of a Commingled Fund will be permitted to terminate its participation in the lending arrangement by terminating its investment in the Commingled Fund no later than 35 days after the notice of termination of participation is received, without penalty to the Plan, in accordance with the terms of the Commingled Fund. Upon a termination, the Borrower will be contractually obligated to return securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Lender within one of the following time periods, whichever is least: The customary delivery period for such securities, five business days of written notification of termination, or the time negotiated for such delivery by the Client Plan, in a Separate Account, or by BGI, as lending agent to a Commingled Fund, and the Borrowers.

Because the securities must be returned before the end of the customary delivery period for sale of

[28] BGI may make transmittals required by the exemption to Plan fiduciaries via authorized recordkeepers. BGI represents that all decisions reserved to fiduciaries under the terms of the exemption will be made by the fiduciaries and never by the recordkeeper on behalf of the fiduciary.

those securities, BGI need not wait to sell the securities as long as it has the contractual assurance that they will be returned before settlement. Consequently, the lending has no impact on the investment decision to sell or its implementation and, therefore, no effect on tracking error.

12. The Lender, or another custodian designated to act on its behalf, will receive collateral from each Borrower by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the Borrower. All collateral will be received by the Lender or other custodian, in the United States. The collateral will consist of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank other than Barclays (or any subsequent parent corporation of BGI, BC NY, BC UK, and BGIS) or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended or superseded). The collateral will be held on behalf of a Client Plan in a depository account separate from the Borrower.

The market value (or, in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Lender a continuing security interest in and a lien on or title to the collateral. BGI will monitor the level of the collateral daily. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (or such greater percentage as agreed to by the parties) of the market value of the loaned securities at the close of business on that day, BGI will require the Borrowers to deliver by the close of business on the next day sufficient additional collateral to bring the level back to at least 102 percent.

13. Prior to making any loans under the Loan Agreement from Separate Accounts, the Borrowers will furnish their most recent available audited and unaudited financial statements to BGI, which will provide such statements to the Client Plan invested in such Separate Account before the authorizing fiduciary of the Client Plan is asked to approve the proposed lending to the Borrowers. The terms of the Loan Agreement will contain a requirement that the Borrowers must give prompt notice to BGI at the time of any loan of any material adverse change in their financial condition since the date of the most recently furnished financial statements. If any such material adverse change has taken place, BGI will request that the independent fiduciary of the Client Plan, if invested in a Separate Account, approve continuation of the lending arrangement in view of the changed financial conditions.

In addition, upon request, BGI will provide the audited financial statements of the applicable Borrowers to Client Plans invested in Commingled Funds on an annual basis.

14. In the case of Client Plans currently invested in Commingled Funds, approval of lending to the Borrowers will be accomplished by the following special procedure for Commingled Funds. The information described in paragraph 8 will be furnished by BGI as lending fiduciary to an independent fiduciary of each Client Plan invested in Commingled Funds not less than 30 days prior to implementation of the lending arrangement, and thereafter, upon the reasonable request of the authorizing fiduciary. In the event any such authorizing fiduciary submits a notice in writing within the 30-day period to BGI, in its capacity as the lending fiduciary, objecting to the implementation of or continuation of the lending arrangement with the Borrowers, the Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received. In the case of a Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw. In the case of a Plan whose assets are proposed to be invested in a Commingled Fund subsequent to the implementation of the arrangement, the Plan's investment in the Commingled Fund shall be authorized in the manner described in paragraph 8.

In the case of loans made by Commingled Funds, upon notice by the Borrower to BGI of a material adverse change in its financial conditions, BGI will make a decision whether to terminate existing loans and whether to continue making additional loans to the Borrower, using the same standards of credit analysis BGI would use in evaluating unrelated borrowers. In the event the Client Plan invested in a Commingled Fund has any objection to the continuation of lending to a Borrower, it may withdraw from the fund as described above.

15. With respect to material changes in the lending arrangement with the Borrowers after approval by Client Plans, BGI will obtain approval from Client Plans (whether in Separate Accounts or Commingled Funds) prior to implementation of any such change. For those Client Plans invested in Commingled Funds, approval of the proposed material change will be by the procedure described in paragraph 14.

16. In return for lending securities, the Lender either will receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral. Under such circumstances, the Lender may pay a loan rebate or similar fee to the Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's length transaction with an unrelated party.

In this regard, each time a Lender loans securities to a Borrower pursuant to the Loan Agreement, BGI will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The fee or rebate payable for each loan will be effected at arm's-length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described below. The rebate rates, which are established for cash collateralized loans made by the Lender, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds (typically the U.S. Federal Funds rate established by the Federal Reserve System), the overnight "repo" rate, or the like and the anticipated investment returns on the investment of cash collateral. Further, the lending fees with respect to loans collateralized by other than cash will be set daily to reflect conditions as influenced by potential market demand. The applicants represent that the securities lending agent fee paid to BGI will comply with the requirements of PTE 82–63.

BGI will establish each day a written schedule of lending fees [29] and rebate

[29] BGI will adopt minimum daily lending fees for non-cash collateral payable by Borrowers to BGI on behalf of a Lender. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. BGI will submit the method for determining such minimum daily lending fees to an authorizing fiduciary of the Client Plan, in the case of a Separate Account, for

rates [30] with respect to new loans of designated classes of securities, such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and non-U.S. equities, in order to assure uniformity of treatment among borrowers and to limit the discretion BGI would have in negotiating securities loans to Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which are more advantageous to the Lenders. The applicants represent that in no case will loans be made to Borrowers at rates or lending fees that are less advantageous to the Lenders than those on the relevant schedules. In addition, it is represented that the method of determining the daily securities lending rates (fees and rebates) will be disclosed to each Client Plan, whether in Separate Accounts or Commingled Funds. For those Client Plans invested in Commingled Funds, disclosure will be by the special procedure described in paragraph 14.

17. When a loan of securities by a Lender is collateralized with cash, BGI will transfer such cash to the trust or other investment vehicle for investment that the Client Plan has authorized, and will rebate a portion of the earnings on such collateral to the appropriate Borrower as agreed to in the securities lending agreement between Lender and the Borrower. BGI will share with the Client Plan the income earned on the investment of cash collateral for BGI's provision of lending services, which will reduce the income earned by the Client Plans (whether in a Commingled Fund or Separate Account) from the lending of securities. BGI may receive a separate management fee for providing cash collateral investment services. Where collateral other than cash is used, the Borrower will pay a fee to the Lender based on the value of the loaned securities. These fees will also be shared between the Client Plans (whether in a Commingled Fund or Separate Account) and BGI. Any income or fees shared will be net of cash collateral management fees and borrower rebate fees. The sharing of income and fees will be in accordance with the arrangements authorized by the Client Plan in advance of commencement of the lending program.

An authorizing fiduciary of the Client Plan also may authorize BGI to act as investment manager, custodian, and/or directed trustee of the Client Plan's Index or Model-Driven portfolio of securities available for lending whether in a Separate Account or Commingled Fund, and to receive a reasonable fee for such services.

18. BGI will negotiate rebate rates for cash collateral payable to each borrower, including Borrowers, on behalf of a Lender. The fees or rebate rates negotiated will be effected at arm's length terms, and such terms will be in no case less favorable to the Client Plan than the pricing established according to the schedule described in paragraph 16.

With respect to any loan to a Borrower, BGI, at the inception of such loan, will not negotiate and agree to a rebate rate with respect to such loan which it expects would produce a zero or negative return to the Lender over the life of the loan (assuming no default on the investments made by BGI where it has investment discretion over the cash collateral or on investments expected to be made by the Client Plan's designee, where BGI does not have investment discretion over cash collateral).

19. BGI may, depending on market conditions, reduce the lending fee or increase the rebate rate on any outstanding loan to a Borrower, or any other borrower. Except in the case of a change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated, such reduction in lending fee or increase in rebate shall not establish a lending fee below the minimum or a rebate above the maximum set in the schedule of fees and rebates described in paragraph 16. If BGI reduces the lending fee or increases the rebate rate on any outstanding loan from a Separate Account to a Borrower (except in the case of a change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), BGI, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan invested in the Separate Account with notice (including by electronic means) that it has reduced such fee or increased the rebate rate to such Borrower and that the Client Plan may terminate such loan at any time.

20. Except as otherwise expressly provided in the exemption, the applicants represent that all procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63, both as amended or superseded, as well as to applicable securities laws of the United States and the United Kingdom.

21. Barclays agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with the Borrower so that the Lender does not have to litigate, in the case of BC UK, in a foreign jurisdiction, nor sue to realize on the indemnification. Such indemnification will be against any and all reasonably foreseeable losses, costs and expenses (including attorneys fees) which the Lender may incur or suffer arising from any impermissible use by a Borrower of the loaned securities, from an event of default arising from the failure of a Borrower to deliver loaned securities when due in accordance with the provisions of the Loan Agreement or from a Borrower's other failure to comply with the terms of the Loan Agreement, except to the extent that such losses are caused by the Client Plan's own negligence. The applicable Borrower will also be liable to the Lender for breach of contract for any failure by such Borrower to deliver loaned securities when due or to otherwise comply with the terms of the Loan Agreement.

If any event of default occurs to the extent that (i) liquidation of the pledged collateral or (ii) additional cash received from the Borrower does not provide sufficient funds on a timely basis, BGI, as securities lending agent, promptly and at its own expense, shall purchase or cause to be purchased for the account of the Lender, securities identical to the borrowed securities (or their equivalent). If the collateral and any such additional cash is insufficient to accomplish such purchase, Barclays, pursuant to the indemnification, will indemnify the Lender for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorneys' fees). Alternatively, if such replacement securities cannot be obtained in the open market, Barclays will pay the Lender the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral as determined on the date of the Borrower's breach of the obligation to return the securities pursuant to the applicable Loan Agreement.

The "market value" of any securities listed on a national securities exchange

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approval before initially lending any securities to Borrowers on behalf of such Client Plan. BGI will submit the method for determining such minimum daily lending fees to an authorizing fiduciary of each Client Plan involved in or planning to invest in a Commingled Fund pursuant to the procedure described in paragraph 14, above.

[30] Separate maximum daily rebate rates will be established with respect to loans of securities within the designated classes identified above.

in the United States will be the last sales price on such exchange on the preceding business day or, if there is no sale on that day, the last sale price on the next preceding business day on which there is a sale on such exchange, as quoted on the consolidated tape. If the principal market for securities to be valued is the over-the-counter market, the securities' market value will be the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ) on the preceding business day or the opening price on such business day if the securities are issues for which last sale prices are not quoted on NASDAQ. If the securities to be valued are not quoted on NASDAQ, their market value shall be the highest bid quotation appearing in The Wall Street Journal, National Quotation Bureau pink sheets, Salomon Brothers quotation sheets, quotation sheets of registered market makers and, if necessary, independent dealers' telephone quotations on the preceding business day. (In each case, if the relevant quotation does not exist on such day, then the relevant quotation on the next preceding business day in which there is such a quotation would be the market value.)

22. The Lender will be entitled to receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including but not limited to, interest and dividends, shares of stock as a result of a stock split and rights to purchase additional securities, or other distributions during the loan period.[31]

23. Further, prior to a Client Plan's authorization of a securities lending program, BGI will provide a Plan fiduciary with copies of the notice of proposed exemption and, if granted, the final exemption.

24. In order to provide the means for monitoring lending activity in Separate Accounts and Commingled Funds, a quarterly report will be provided to an auditor selected by BGI who is independent of BGI (but may or may not be independent of the Client Plan). This report will show the fees or rebates (as applicable) on loans to Borrowers compared with loans to other borrowers, as well as the level of collateral on the loans. The applicants represent that the quarterly report will show, on a daily basis, the market value of all outstanding security loans to Borrowers and to other borrowers as compared to the total collateral held for both categories of loans. Further, the quarterly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all borrowers where cash is used as collateral. The quarterly report also will state, on a daily basis, the rates at which securities are loaned to Borrowers compared with those at which securities are loaned to other borrowers.

The independent auditor will review the lending data on a quarterly basis and certify whether the loans have satisfied the criteria of this exemption, in that they appear no less favorable to the Separate Account or Commingled Fund than the pricing established in the schedule described in paragraph 16. Client Plans invested in Separate Accounts will receive both the quarterly report and the auditor's certification as described above. Client Plans invested in Commingled Funds will receive the auditor's certification and, upon request, will receive the quarterly report.

In the event an authorizing fiduciary of a Plan invested in a Commingled Fund submits a notice in writing to BGI objecting to the continuation of the lending program to the Borrowers, the Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received.

25. To ensure that any lending of securities to a Borrower will be monitored by an authorizing fiduciary of above average experience and sophistication in matters of this kind, only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the Borrowers. However, in the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangement with BGI, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with BGI, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity must have full investment responsibility with respect to plan assets invested therein, and must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. In addition, none of the entities described above may be formed for the sole purpose of making loans of securities.

26. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Lenders by BGI will be to borrowers unrelated to BGI. Thus, the competitiveness of the loan fee will be continuously tested in the marketplace. Accordingly, the applicants believe that loans to Borrowers should result in competitive fee income to the Lenders.

27. With respect to foreign Borrowers, the applicants represent that BC UK is regulated by the UK SFA and is, therefore, authorized to conduct an investment banking business in and from the United Kingdom as a broker-dealer. The proposed exemption will be applicable only to transactions effected by BC UK which is registered as a broker-dealer with the SFA and in compliance with Rule 15a–6 under the

[31] The applicants represent that dividends and other distributions on foreign securities payable to a Lender may be subject to foreign tax withholdings. Under these circumstances, the applicable Borrower, where necessary, will gross-up the in-lieu-of-payment (in respect of such dividend or distribution it makes) to the Lender so that the Lender will receive back what it otherwise would have received (by way of dividend or distribution) had it not loaned the securities.

Securities Exchange Act of 1934 (Rule 15a–6). The applicants represent that the role of a broker-dealer in a principal transaction in the United Kingdom is substantially identical to that of a broker-dealer in a principal transaction in the United States. The applicants further represent that registration of a broker-dealer with the SFA is equivalent to registration of a broker-dealer with the SEC under the 1934 Act. The applicants maintain that the SFA has promulgated rules for broker-dealers which are equivalent to SEC rules relating to registration requirements, minimum capitalization, reporting requirements, periodic examinations, fund segregation, client protection, and enforcement. The applicants represent that the rules and regulations set forth by the SFA and the SEC share a common objective: the protection of the investor by the regulation of securities markets. The applicants explain that under SFA rules, a person who manages investments or gives advice with respect to investments must be registered as a "registered representative." If a person is not a registered representative and, as part of his duties, makes commitments in market dealings or transactions, that person must be registered as a "registered trader." The applicants represent that the SFA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they fall due, and that the SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition to demonstration of capital adequacy, the applicants state that the SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and all records relating to a counterparty, and that all records must be produced at the request of the SFA at any time. The applicants state that SFA's registration requirements for broker-dealers are backed up by potential fines and penalties and rules which establish a comprehensive disciplinary system.

28. In addition to the protections afforded by registration with the SFA, the applicants represent that BC UK will comply with the applicable provisions of Rule 15a–6 (described below). The applicants represent that compliance by BC UK with the requirements of Rule 15a–6 will offer additional protections in lieu of registration with the SEC. The applicants represent that Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor", as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, (b) the employee benefit plan has total assets in excess of $5,000,000, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term "major U.S. institutional investor" is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million, or is an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million. The applicants represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The applicants represent that, under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with 15a–6 must, among other things:

a. Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

b. Provide the SEC with any information or documents within its possession, custody or control, any testimony of any foreign associated persons,[32] and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to Rule 15a–6; and

c. Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

1. Effect the transactions, other than negotiating their terms;

2. Issue all required confirmations and statements;

3. As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

4. Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

5. Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection-Reserves and Custody of Securities); and

6. Participate in all oral communications (*e.g.*, telephone calls) between a foreign associated person and the U.S. institutional investor (other than a major U.S. institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major U.S. institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

All collateral will be maintained in United States dollars or U.S. dollar-denominated securities or letters of credit. All collateral will be held in the United States and BGI will maintain the situs of the Loan Agreements (evidencing the Lender's right to return of the loaned securities and the continuing interest in and lien on or title to the collateral) in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

Prior to a transaction involving a foreign Borrower, the foreign Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the

[32] A foreign associated person is defined in Rule 15a–6(b)(2) as any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

Process Agent; and (d) agree that enforcement by a Client Plan of the indemnity provided by Barclays may occur in the United States Courts.

29. In summary, the applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

a. For each Client Plan, neither BGI nor any affiliate (except as expressly permitted in the exemption) will have or exercise discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction or will render investment advice with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan, except to the extent that BGI exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund managed by BGI in which Client Plans invest.

b. Any arrangement for BGI to lend securities will be approved in advance by a Plan fiduciary who (except in the case of a Barclays Plan) is independent of BGI.

c. The terms of each loan of securities by a Lender to a Borrower will be at least as favorable to such Separate Account or Commingled Fund as those of a comparable arm's length transaction between unrelated parties.

d. Upon termination of a loan, the Borrowers will transfer securities identical to the borrowed securities (or the equivalent thereof) to the Lender within one of the following time periods, whichever is least: (1) The customary delivery period for such securities; (2) five business days; or (3) the time negotiated for such delivery by the Client Plan, in a Separate Account, or by BGI, as lending agent to a Commingled Fund, and the Borrowers.

e. The Lender will receive from each Borrower collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank (other than Barclays Bank PLC or any subsequent parent corporation of BGI, BC NY, BC UK and BGIS, or an affiliate thereof, or any combination thereof) or other collateral permitted under PTE 81–6 (as amended or superseded), which will be held in a depository account separate from the Borrower.

f. In return for lending securities, the Lender either will receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral.

g. Barclays agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with a Borrower so that the Client Plans do not have to litigate, in the case of BC UK, in a foreign jurisdiction nor sue to realize on the indemnification.

h. All loans involving foreign Borrowers will involve Borrowers that are registered as broker-dealers subject to regulation by the SFA and that are in compliance with all applicable provisions of Rule 15a–6.

i. Prior to a transaction involving a foreign Borrower, the foreign Borrower will: agree to submit to the jurisdiction of the United States; agree to appoint a Process Agent in the United States; consent to service of process on the Process Agent; and agree that enforcement by a Client Plan of the indemnity provided by Barclays may occur in the United States courts.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Carl Mundy, Jr. Defined Benefit Plan (the Plan)

Located in Alexandria, Virginia

[Application No. D–11043]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed contribution(s) (the Contribution(s)) to the Plan of shares (the Shares) of Schering-Plough Corporation (Schering-Plough) to be received annually by Carl Mundy, Jr. (Mr. Mundy), a disqualified person with respect to the Plan [33] as compensation in the form of Shares in lieu of cash, provided that the following conditions are met:

(a) The Shares are valued at its fair market value at the time of each Contribution;

(b) The Shares represent no more than 20% of the total assets of the Plan following each Contribution;

(c) The Plan will not pay any commissions, costs or other expenses in connection with the Contributions;

(d) Mr. Mundy, who is the only person affected by the transactions, believes that the transactions are appropriate for the Plan and desires that the transactions be consummated.

Summary of Facts and Representations

1. The Plan is a defined benefit plan covering only Mr. Mundy, who is the Plan's sponsor, administrator and trustee. Mr. Mundy is a sole proprietor engaged in the business of being a member of the board of directors for several companies.

2. Mr. Mundy's annual earned income derives principally from services rendered as a member of the board of directors of various corporations. In this regard, Mr. Mundy serves as a member of the board of directors of Schering-Plough. Thirty percent of his annual earned income is received from the receipt of the Shares in lieu of cash compensation. The Shares are valued by Schering-Plough on the day of the Contribution, reported to the Securities and Exchange Commission as a company stock transaction, and subsequently, to the IRS on form 1099 as taxable, cash compensation.

3. At the time of each Contribution, the Shares will represent no more than less than 20% of the Plan's assets. The Shares will be contributed in subsequent Plan years only to the extent that the fair market value of all the Shares in the Plan will not exceed 20% of the total value of the Plan's assets at the time of the Contribution.

4. The applicant states that his Federal income tax deduction for the Contribution will not exceed the fair market value of the Shares at the time of the Contribution. In addition, the Plan will not incur any sales commissions or other expenses in connection with the Contributions.

5. Mr. Mundy believes that the proposed exemption will enable Mr. Mundy to utilize earned compensation received in a form different than cash, but reported, treated, and taxed as cash, as a cash equivalent contribution to the Plan.

6. Mr. Mundy represents that there is little chance of there being a Plan participant other than himself. However, in the future if there is a new employee. Mr. Mundy will establish a separate defined benefit plan for such employee containing provisions comparable to those contained in the Plan.

[33] Since Mr. Mundy is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The Shares will be valued at its fair market value at the time of each Contribution;

(b) The Shares will represent no more than 20% of the total assets of the Plan following each Contribution;

(c) The Plan will not pay any commissions, costs or other expenses in connection with the Contributions; and

(d) Mr. Mundy, who is the only person affected by the transactions, believes that the transactions are appropriate for the Plan and desires that the transactions be consummated.

Notice to Interested Parties: Because Mr. Mundy is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

HSBC Holdings plc

Located in London, England

[Exemption Application No.: D–11057]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[34] If the exemption is granted, HSBC Asset Management Americas, Inc. (AMUS), HSBC Asset Management Hong Kong, Ltd. (AMHK), HSBC Bank USA (Bank USA), and any current affiliate of HSBC Holdings plc (HSBC) that is eligible to serve or becomes eligible to serve as a qualified professional asset manager (a QPAM), as defined in Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[35] HSBC, itself, if in the future it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM, other than Republic New York Securities Corporation (RNYSC), shall not be precluded from functioning as a QPAM, pursuant to the terms and conditions of PTCE 84–14, for the period beginning on December 17, 2001, and ending ten (10) years from the date of the publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of an affiliation with RNYSC; provided that:

(a) RNYSC has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(b) This exemption is not applicable if HSBC and/or any successor or affiliate is affiliated with or becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than RNYSC; and

(c) This exemption is not applicable if HSBC and/or any successor or affiliate is convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by RNYSC.

EFFECTIVE DATE: If granted, this proposed exemption will be effective for the period beginning on December 17, 2001, the date on which the U.S. Attorney for the Southern District of New York filed an Information and Government's Memorandum (the Information) outlining the charges against RNYSC and on which RNYSC entered a plea of guilty to the criminal charges set forth in the Information, and ending ten (10) years from date of the publication of the final exemption in the **Federal Register**.

Summary of Facts and Representations

1. HSBC, a publicly owned holding company headquartered in London, England, is a U.K. corporation the shares of which are listed and traded on stock exchanges in New York, London, and Hong Kong. HSBC, together with its subsidiaries and affiliates, provides a wide range of banking and financial services in 79 countries. HSBC had consolidated assets, as of December 31, 2000, of approximately $673 billion.

The exemption is requested for affiliates of HSBC, AMUS, AMHK, and Bank USA that currently qualify as QPAMs, as well as for any current affiliate of HSBC that now or in the future becomes eligible to serve as a QPAM, HSBC, itself, if it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM (collectively, the Applicants), other than RNYSC.

One of the Applicants, Bank USA, an affiliate of HSBC, located in Buffalo, New York, currently conducts business as a QPAM in compliance with the requirements of PTCE 84–14 and other applicable exemptions. Bank USA is a New York state-chartered banking corporation and the principal U.S. bank subsidiary of HSBC. As such, Bank USA is subject to regulation and supervision by the Federal Reserve Bank of New York (FRBNY) and the New York State Banking Department (NYSBD). Bank USA has equity capital in excess of $1,000,000 and is a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act). As such, Bank USA is subject to the anti-fraud provisions of the Advisers Act, as well relevant state law. Bank USA has approximately $7.1 billion in assets under management of which approximately $448 million can be attributed to business with plans subject to the Act. Accordingly, the Applicants represent that Bank USA qualifies as a QPAM, pursuant to section V(a)(1) of PTCE 84–14.

Two other Applicants, AMUS and AMHK are corporations organized, respectively, under the laws of the state of New York and the Peoples Republic of China. AMUS maintains offices on Fifth Avenue in New York, NY, while AMHK is located in Hong Kong. Both AMUS and AMHK are indirectly owned by HSBC and are investment advisers registered under the Advisers Act. As such, both are subject to the jurisdiction of the Securities and Exchange Commission (the SEC) and to the substantive requirements of the Advisers Act. In this regard, AMUS and AMHK must make annual disclosure filings with the SEC and are subject to unannounced audits by the SEC to ensure compliance with the requirements of the Advisers Act.

As of December 31, 2001, AMUS and AMHK have total assets under management and control well in excess of $50,000,000 ($8.5 billion and $13.5 billion, respectively). It is represented that both AMUS and AMHK are each currently qualified to serve as a QPAM.[36]

2. The Applicants have requested the proposed exemption apply with respect to the following employee benefit plans for which either AMUS or AMHK currently serve as investment managers: (i) The National Fuel and Gas Company Employee Thrift Plan—1996; (ii) The National Fuel and Gas Company Employee Thrift Plan—2002; (iii) The ITT Master Retirement Trust; and (iv) The Northrop Employee Benefit Plan.[37]

[34] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[35] 49 FR 9494 (March 13, 1984), *as amended*, 50 FR 41430 (October 10, 1985).

[36] The Department expresses no opinion as to whether AMUS, AMHK, or Bank USA qualify as a QPAM for purposes of PTCE 84–14.

[37] In their application for exemption, the Applicants also requested relief for transactions

Continued

The Applicants have also requested that the proposed exemption apply to any employee benefit plans for which the Applicants in the future serve as investment managers but which could not definitely be identified at the time the application was filed. The employee benefit plans for which the Applicants now or in the future serve as investment managers are referred to herein, collectively, as the Plan Clients. It is represented that consistent with the requirements of PTCE 84–14, a fiduciary independent of the Applicants is or will be involved in the appointment of any of the Applicants to serve as a QPAM with respect to the assets of any of the Plan Clients that are or will be affected by this proposed exemption.

3. Beginning in 1995 and continuing over a period of four (4) years, RNYSC allegedly engaged in certain wrongful conduct. The conduct arose out of the involvement of the Futures Division of RNYSC with certain of its customers which were various special purpose entities and out of the involvement of the Futures Division of RNYSC with the founder and chairman of these entities, Martin Armstrong (Mr. Armstrong). It is alleged that Mr. Armstrong, through such entities, issued promissory notes with a face value of approximately $3 billion which were sold to certain Japanese investors (the Japanese Investors). The proceeds of such sales were deposited in certain custodial accounts (the Accounts) maintained at the Futures Division of RNYSC. Marketing materials provided to the Japanese Investors allegedly contained misrepresentations or misleading statements concerning the investment program and how such investors' money would be held. In addition, at least some the Japanese Investors were allegedly provided by Mr. Armstrong with letters issued by employees of RNYSC on RNYSC letterhead that substantially overstated the net asset value of the balances in the Accounts.

In late August 1999, while in the process of obtaining approval to acquire RNYC, HSBC was informed by RNYC that the Financial Supervisory Agency (FSA) of Japan had launched an investigation into the Tokyo branch of one of Mr. Armstrong's affiliated companies. On August 18, 1999, RNYSC informed HSBC that it had begun an internal investigation of the Accounts based on receipt of the notice from the FSA. It is represented that HSBC immediately notified the staff of the agencies whose approval of the acquisition was required, that it would await the results of RNYC's internal investigation before deciding whether to proceed with the proposed acquisition.

On September 1, 1999, when U.S. authorities seized the Accounts, approximately $49 million remained in those Accounts and approximately $1 billion in face value of notes were outstanding. On September 13, 1999, Mr. Armstrong was charged with mail and wire fraud.

Before learning of the involvement of the Futures Division of RNYSC with Mr. Armstrong and his affiliated companies, it is represented HSBC had performed substantial regulatory and corporate due diligence of RNYC and its subsidiaries. It is represented that this due diligence revealed nothing regarding RNYSC's wrongful conduct. After learning of such misconduct, HSBC performed additional due diligence on the operations of RNYC with a view to satisfying itself that there were no other matters which might cause it to reconsider the proposed acquisition of RNYC.

These steps were designed by HSBC to satisfy itself that there was no systemic breakdown at RNYC that might have led to serious exposures to risks in other business lines or that could not be prospectively cured to HSBC's satisfaction with the introduction of HSBC's internal controls following the acquisition. In this regard, HSBC arranged for, and evaluated the results of several reviews of the worldwide operations of RNYC, all of which were meant to consider the compatibility of the operations of RNYC with those of HSBC. This due diligence included reviews of certain of RNYC's non-U.S. operations, including its relationships with hedge funds, and various of its U.S. businesses, including its precious metals business, retail brokerage operations, and private banking activities. HSBC also reviewed certain of RNYSC's branch office operations, policies and procedures, including reports from its subsidiary bank's internal auditors. Based on the results of these reviews, along with RNYC's report on its internal investigation, senior management concluded that, aside from the conduct of RNYSC in connection with the misconduct of the Futures Division of RNYSC, the operations of RNYC and its affiliates and subsidiaries were otherwise sound. Therefore, HSBC with the approval of the Federal Reserve Board, the FRBNY and the NYSBD, proceeded with the acquisition.

On December 31, 1999, HSBC acquired all of the outstanding shares of Republic New York Corporation (RNYC), the then parent holding company of Republic National Bank of New York (Republic Bank) and numerous other subsidiaries, including RNYSC. Immediately following the acquisition, the Republic Bank was merged with Bank USA (formerly, the Marine Midland Bank). HSBC also acquired at the same time the outstanding shares that were not already owned by RNYC of Safra Republic Holdings SA, a Luxemburg holding company and parent of various European private banking operations.

4. On December 17, 2001, the United States Attorney filed the Information in the United States District Court for the Southern District of New York (the Court) alleging that RNYSC had engaged in conspiracy in violation of 18 U.S.C. 371 and securities fraud in violation of 15 U.S.C. 78j(b) and 78ff. On the same date, RNYSC entered a plea of guilty to the charges in the Information, pursuant to a written cooperation and plea agreement (the Plea Agreement). In the Plea Agreement, RNYSC agreed to the entry of a restitution order totaling in excess of approximately $600 million to compensate certain of the Japanese Investors. Pursuant to the terms of the Plea Agreement, HSBC USA Inc. (HSBC USA), RNYSC's parent company and an indirect wholly-owned subsidiary of HSBC, also agreed to compensate the Japanese Investors to the extent that the amount of the restitution exceeds the capital of RNYSC. In exchange for the payments by RNYSC and HSBC USA, the Japanese Investors opting to receive restitution agreed to dismiss their pending civil lawsuits.

As a result of the events leading to the Plea Agreement, on December 17, 2001, the same date on which the Information was filed with the Court, the Commodity Futures Trading Commission (CFTC) entered an administrative order and simultaneously settled an enforcement action against RNYSC alleging violations of the Commodity Exchange Act, as amended. Pursuant to the settlement with the CFTC, RNYSC's registrations as a Futures Commissions Merchant and as a Commodity Trading

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involving certain employee benefit plans sponsored by the Applicant and managed in-house (the In-House ERISA Plan Clients) and certain collective investment funds managed by Bank USA (the ERISA Collective Investment Fund Clients). Subsequently, in a letter dated February 4, 2002, the Applicants withdrew their request for relief for the In-House ERISA Plan Clients and the ERISA Collective Investment Fund Clients. In the case of the In-House ERISA Plan Clients, the Applicants represent that they will rely on the terms of Prohibited Transaction Class Exemption 96–23 for party in interest in-house transactions. In the case of the ERISA Collective Investment Fund Clients, the Applicants represent that they will rely on the terms of Prohibited Transaction Class Exemption 91–38, regarding transactions involving bank collective investment funds.

The Department expresses no opinion as to whether the Applicants satisfy the requirements of these class exemptions.

Advisor were revoked. Further, among other things, RNYSC was ordered to pay a civil money penalty in the amount of $5 million.

Also, as a result of the events leading to the Information and the Plea Agreement on December 17, 2001, the SEC entered an administrative order and simultaneously settled an enforcement action against RNYSC alleging violations of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. Pursuant to the settlement with the SEC, RNYSC registration as a broker dealer was revoked. On December 17, 2001, HSBC and certain of its subsidiaries and affiliates, as a result of their affiliation with RNYSC, filed an application with the SEC for a temporary and permanent order exempting them from section 9(a) of the Investment Company Act of 1940, pursuant to section 9(2) of such act. The SEC granted the temporary order on December 17, 2001, and the permanent order on January 14, 2002.

5. The Applicants have requested that the proposed exemption, if granted, would permit each of them to continue to function as a QPAM, pursuant to the terms and conditions of PTCE 84–14. PTCE 84–14, in general, permits various parties in interest with respect to an employee benefit plan to engage in certain transactions involving plan assets, if, among other conditions, the assets are managed by a QPAM who is independent and who meets specified financial standards and other conditions. In this regard, the requested exemption would apply to a full range of transactions that can be executed by investment managers which qualify as QPAMS.

6. The Applicants represent that it would not be uncommon for one of the Applicants, as a fiduciary for one of the Plan Clients, to engage in a transaction that involves a party in interest, as defined under section 3(14) of the Act. Although such parties in interest can be identified when a specific transaction is contemplated, it is not practical for the Applicants to identify all the parties in interest that might be involved in transactions covered by the requested exemption, given the size, number, and changing identity of such Plan Clients, the large number of service providers (particularly financial institutions) that such Plan Clients engage, the breadth of the definition of "party in interest" under the Act, and the wide array of services offered by the Applicants. Accordingly, the Applicants have requested that the proposed exemption apply to all current and future parties in interest transactions with respect to the Plan Clients.

The transactions with parties in interest for which relief has been requested by the Applicants include, but are not limited to sale and exchange transactions, derivative transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities to an investment fund managed on a discretionary basis. It is represented that many of these types of transactions comprise an important component of the Applicants' business activities. It is represented that such transactions typically would have been evaluated by the Applicants, consistent with their fiduciary responsibilities under the Act, on the merits of such transactions, without regard to the involvement of a party in interest and that the terms of any material transactions with a party in interest are consistent with an arm's length standard at the time such terms are agreed to.[38]

7. In all but one respect, the terms and conditions of the proposed exemption are identical to those, as set forth in PTCE 84–14. However, section I(g)of PTCE 84–14, requires that the QPAM and any affiliate of the QPAM must not have been convicted of certain felonies within a ten (10) year period preceding each transaction covered by the class exemption. The term, "felony," as set forth in section I(g) of PTCE 84–14 includes:

> any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization: any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary: income tax evasion: any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element: or any other crimes described in section 411 of the Act.

Section V(d) of PTCE 84–14, defines an "affiliate" of a person to mean—

> (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and (4) Any employee or officer of the person who —(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

Section V(e) of PTCE 84–14 states that the term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

8. Upon the acquisition of RNYC by HSBC in December 31, 1999, the Applicants became affiliated with RNYC and RNYSC, pursuant to the definition of "affiliate," as set forth in section V(d) of PTCE 84–14. Further, because RNYSC on December 17, 2001, entered a plea of guilty with respect to a felony, as described in section I(g) of PTCE 84–14, the Applicants, as affiliates of RNYSC, as of that date, could no longer satisfy section I(g) of PTCE 84–14. Furthermore, as of the same date, any of the Applicants which had qualified as a QPAM (*e.g.*, AMUS, AMHK, and Bank USA) were precluded from continuing to act as a QPAM. Accordingly, Applicants seek retroactive relief from the restrictions of section 406(a)(1)(A)–(D), and 406(b)(1), and 406(b)(2), of the Act, as well as the corresponding provisions of the Code. The Applicants further request that the exemption be effective as of December 17, 2001, the date on which RNYSC signed the Plea Agreement.

9. The Applicants maintain that the requested exemption should be granted notwithstanding the guilty plea entered by RNYSC. In support of their position, the Applicants state that all of the activity covered by the RNYSC guilty plea occurred before RNYSC became affiliated with HSBC. It is represented that none of the acts underlying the guilty plea involved any investment management activities of the

[38] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. The Department further emphasizes that it expects a manager or other plan fiduciary to fully understand the benefits and risks associated with engaging in a specific transaction. In addition, such manager or plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment and the creditworthiness of the issuer or other party to the transaction. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

Applicants, nor did such activity affect any assets of any plan subject to the Act.

HSBC and its subsidiaries fully cooperated with the U.S. Attorney's Office, the SEC and the CFTC in their investigations in the matters that form the basis of the Information and were cited by the U.S. Attorney for their exemplary degree of cooperation.

The former employees of RNYSC who were identified by RNYSC and HSBC as being responsible for the matter out of which the Plea Agreement arose were terminated in 1999 and 2000 and are no longer employed by RNYSC. Further, it is represented that the individuals responsible for RNYSC's misconduct are not now nor will they be employees of HSBC or any of its affiliates.

The Applicants maintain that the charges related to the guilty plea in no way reflect upon the Applicants' ability to serve as independent investment managers. After the acquisition, RNYSC ceased active operations and is now a dormant corporation. All of the executives of RNYSC who were associated with RNYSC's misconduct were terminated in 1999 and 2000. There are currently only two officers of RNYSC, neither of whom were connected with the activities that gave rise to RNYSC's guilty plea and both of whom were appointed by HSBC to administer the dormant operations of RNYSC. Neither RNYSC nor its employees will be involved in investment management activities relating to plans subject to the Act, nor will such parties influence or control the management or policies of the Applicants in the future.

HSBC and its U.S. subsidiaries have implemented steps designed to prevent future violations of applicable laws and regulations similar to those that are the subject of the Information. In addition to winding down RNYSC, HSBC promptly brought RNYC and its subsidiaries under the rigorous policies and procedures, internal controls, audit procedures, and compliance regime that applies to all subsidiaries of HSBC world wide. It is represented that these measures are designed, among other things, to identify and prevent conduct similar to the criminal conduct which is the basis for the criminal charges set forth in the Information.

10. The Applicants maintain that the requested exemption is protective of the rights of participants. In this regard, the proposed exemption contains safeguards similar to those provided in PTCE 84–14. Specifically, all of the conditions imposed by PTCE 84–14 would apply to this proposed exemption, except that section I(g) of PTCE 84–14 would not apply to the violations giving rise to RNYSC's guilty plea. Further, it is represented that many of the Applicants' Plan Clients have significant assets, and hence have the sophistication and the access to resources necessary to monitor effectively the performance of such plans' investment managers.

The proposed exemption also contains conditions, in addition to those imposed by PTCE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the Plan Clients against wrongdoers now and in the future. In this regard, the proposed exemption will not be applicable if any of the Applicants is convicted of or is affiliated with or becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTCE 84–14, including any such crimes subsequently committed by RNYSC.

11. The Applicants represent that the requested exemption is administratively feasible because the relief would not impose any administrative burdens either on the Applicants or on the Department which are not already imposed by PTCE 84–14. In the opinion of the Applicants, the administrative feasibility of the requested exemption is further demonstrated by the fact that the Department has previously granted other individual exemptions for a variety of similarly situated entities under substantially the same circumstances.[39]

12. Without the requested relief, the Plan Clients may be forced to incur greater transaction costs and increased credit risks, if certain transactions are effected through unrelated parties, rather than through parties in interest.

13. Denial of the exemption, in the opinion of the Applicants, would be unduly and disproportionately severe as applied to Plan Clients for which the Applicants serve as investment managers. In this regard, in the absence of the requested relief, the Applicants would be required to examine each transaction involving Plan Clients to determine whether it involves a party in interest, no matter how remote, with respect to such plans. Even with careful screening procedures for each transaction, the Plan Clients may have to forgo certain transactions in order to avoid the possibility of engaging inadvertently in a prohibited transaction. The Applicants point out that although individual exemptions may be obtained for transactions for which no existing class exemption applies, the application process can be expensive and time consuming. In the opinion of the Applicants, the proposed exemption, if granted, would eliminate both the potential for certain inadvertent prohibited transactions and avoid needless expenses and time delays.

14. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) no entity affiliated with HSBC, other than RNYSC, was involved in the conduct that formed the basis of the guilty plea;

(b) RNYSC is now a dormant company and the employees of RNYSC who engaged in the conduct that formed the basis of the guilty plea are no longer employees of HSBC or its affiliates;

(c) neither RNYSC nor its employees will be involved in investment management activities relating to plans subject to the Act, nor will such parties influence or control the management or policies of the Applicants in the future;

(d) all of the conduct that formed the factual basis of the guilty plea occurred before the date that HSBC acquired control of RNYSC;

(e) absent the proposed exemption, the Plan Clients may have to forgo attractive investment opportunities or incur greater transaction costs and risks;

(f) AMUS and AMHK, as investment advisors registered under the Advisers Act, are subject to the jurisdiction of the SEC and the requirements of the Advisers Act;

(g) Bank USA is a commercial bank, as defined in section 202(a)(2) of the Advisers Act, and is subject to the anti-fraud provisions of the Advisers Act, as well as relevant state law;

(h) RNYSC will not be involved in investment management activities relating to the Plan Clients, nor will

[39] In connection with the anticipated acquisition of the Bangkok Metropolitan Bank (BMB), the Applicants filed an application for an administrative exemption (D–10910) on June 16, 2000. The Department published in the **Federal Register** a proposed exemption on October 11, 2000, at 65 FR 60666. Subsequently, the Department published in the **Federal Register** a final exemption (Prohibited Transaction Exemption 2000–70) on December 21, 2000, at 65 F.R. 80461. By letter dated, January 9, 2001, the Applicants informed the Department that the acquisition of BMB did not take place, because final terms acceptable to both parties could not be reached.

Other cases similar to the proposed exemption include: (a) Bankers Trust Co., BT Alex Brown, Inc., and Deutsche Bank, Prohibited Transaction Exemption 99–29, 64 F.R. 40623 (July 22, 1999); (b) PanAngora Management, Inc., Prohibited Transaction Exemption 97–10, 62 F.R. 4813 (Jan. 31, 1997); (c) American Express Company and Affiliates, Prohibited Transaction Exemption 94–34, 59 F.R. 19247 (April 22, 1994); and (d) CS Holding and its Worldwide Affiliates, Prohibited Transaction Exemption 94–31, 59 FR 17590 (April 13, 1994).

RYNSC influence or control the management or policies of HBSC;

(i) other than section I(g) of PTCE 84–14, the conditions of PTCE 84–14 will apply to the transactions covered by this exemption, and such conditions are sufficient under the circumstances to ensure that the best interest of the Plan Clients and their participants are served;

(j) the Plan Clients will be able to engage in a broader variety of investment opportunities;

(k) RNYSC has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(l) this exemption, if granted, would not be applicable if any of the Applicants now, or in the future, becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTCE 84–14, other than RNYSC; and

(m) this exemption, if granted, would not be applicable if any of the Applicants now, or in the future, becomes convicted of any of the crimes described in section I(g) of PTCE 84–14, including such crimes subsequently committed by RNYSC.

Notice to Interested Persons

The Applicants will deliver by hand or by first class mail a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2), to the investment fiduciary or trustee for each of the current Plan Clients for which one or more of the Applicants might potentially act as a QPAM.

The Notice and the Supplemental Statement will be delivered by hand delivery or first class mail, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**.

A copy of the final exemption, if granted, will also be provided to the investment fiduciary or trustee of each of the current Plan Clients who receive a copy of the Notice.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 693–8551. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of February, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–4501 Filed 2–26–02; 8:45 am]

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Federal Register

Wednesday,
February 27, 2002

Part IV

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 410 and 414

Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[HCFA–1002–FC]

RIN 0938–AK30

Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule establishes a fee schedule for the payment of ambulance services under the Medicare program, implementing section 1834(l) of the Social Security Act. As required by that section, the proposed rule on which this final fee schedule for ambulance services is based was the product of a negotiated rulemaking process that was carried out consistent with the Federal Advisory Committee Act and the Negotiated Rulemaking Act of 1990. The fee schedule described in this final rule will replace the current retrospective reasonable cost payment system for providers and the reasonable charge system for suppliers of ambulance services. In addition, this final rule requires that ambulance suppliers accept Medicare assignment; codifies the establishment of new Health Care Common Procedure Coding System (HCPCS) codes to be reported on claims for ambulance services; establishes increased payment under the fee schedule for ambulance services furnished in rural areas based on the location of the beneficiary at the time the beneficiary is placed on board the ambulance; and revises the certification requirements for coverage of nonemergency ambulance services.

DATES: Effective date: April 1, 2002.

Comment date: We will consider comments on portions of the regulation with respect to the following sections of the Medicare, Medicaid, and State Child Health Insurance Program Benefits Improvement and Protection Act (BIPA), Pub. L. 106–554: the provisions implementing the portion of section 205 relating to cost reimbursement for ambulance services furnished by certain critical access hospitals (CAHs) (§ 414.601 and § 414.610(a)); the provisions implementing section 221, establishing the rate for rural ambulance mileage greater than 17 miles and up to 50 miles (§ 414.610(c)(5)); the provisions implementing section 423 with regard to immediate payment of the full ambulance services fee schedule amount for in-county ground mileage under certain circumstances (§ 414.615(g)), if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 29, 2002.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1002–FC, PO Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1002–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 at 7500 Security Blvd, Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to view these comments.

For information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

The Medicare program pays for transportation services for Medicare beneficiaries when other means of transportation are contraindicated. Ambulance services are divided into different levels of ground (including water) and air ambulance services based on the medically necessary treatment provided during transport. These services include the levels of service listed below, which we define later in this rule.

For Ground:

- Basic Life Support (BLS)
- Advanced Life Support, Level 1 (ALS1)
- Advanced Life Support, Level 2 (ALS2)
- Specialty Care Transport (SCT)
- Paramedic ALS Intercept (PI)

For Air:

- Fixed Wing Air Ambulance (FW)
- Rotary Wing Air Ambulance (RW)

Currently payment levels for ambulance services depend, in part, upon the entity that furnishes the services. Providers (hospitals, including critical access hospitals, skilled nursing facilities, and home health agencies) are paid on a retrospective reasonable cost basis. Suppliers, which are entities that are independent of any provider, are paid on a reasonable charge basis. This final rule establishes a fee schedule payment system for all such services.

A. History of Medicare Ambulance Services

1. Original Statutory Coverage of Ambulance Services

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 Social Security Amendments suggest that the Congress intended that (1) the ambulance benefit cover

transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition, and (2) only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37 and S. Rep. No. 404, 89th Cong., 1st Sess., Pt I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

2. Medicare Regulations for Ambulance Services

Our regulations relating to ambulance services are located at 42 CFR part 410, subpart B. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40.

On January 25, 1999, we published a final rule with comment period (64 FR 3637) to revise and update Medicare policy concerning ambulance services. It identified destinations to which ambulance services are covered, established requirements for the vehicles and staff used to furnish ambulance services, and clarified coverage of nonemergency ambulance services for Medicare beneficiaries. This rule also implemented section 4531(c) of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, concerning Medicare coverage for paramedic intercept services in rural communities.

We published a final rule on March 15, 2000 (65 FR 13911) responding to public comments received on the January 25, 1999 final rule with comment period regarding Medicare coverage of, and payment for, paramedic intercept ambulance services in rural communities. It also implemented section 412 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Pub. L. 106–113, by adding a new definition of a rural area.

3. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provides that the ambulance fee schedule be established through the negotiated rulemaking process described in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, 5 U.S.C. 581–590). Negotiations were conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The Negotiated Rulemaking Committee on the Medicare Ambulance Services Fee Schedule (the Committee) consisted of individuals associated with national organizations that represent interests that are likely to be significantly affected by the fee schedule. There was a public solicitation through the **Federal Register** on January 22, 1999 (64 FR 3474) for participation in the negotiated rulemaking process. (Additional information about the negotiations can be found in the January 22, 1999 **Federal Register** notice or may be accessed at our Internet Web site at *http://www.hcfa.gov/medicare/ambmain.htm.*)

The Committee discussed various issues related to the ambulance fee schedule and a consensus Committee Statement was signed on February 14, 2000.

4. Proposed Rule

In our proposed rule, we discussed the negotiated rulemaking procedure used to formulate our policy for the ambulance fee schedule and proposed additions to part 414 based on recommendations of the Committee. We discussed operational and regional variations, cost of living differences, services furnished in rural areas, and mileage. The structure of the fee schedule, the ambulance inflation factor, and phase-in methodology were also discussed.

In addition, we proposed changes unrelated to the Committee's consensus statement on matters including coverage of ambulance services, physician certification requirements, payment during the first year, and billing method. We discussed local or State law related to ambulance services, mandatory assignment, and miscellaneous payment policies, including multiple patients, pronouncement of death, multiple arrivals, and BLS services furnished in an ALS vehicle.

We presented our methodology for determining the conversion factor (CF) and for implementing the fee schedule. We discussed expenditure control for ambulance services and adjustments to account for inflation. Finally, to seek input on the desirability and flexibility of developing a code set to describe patients' conditions, we included an addendum containing a list of medical conditions.

In accordance with the negotiated rulemaking procedures, we proposed the following additions to part 414 based on the recommendations of the Committee.

1. Definitions and levels of services. In part 414, we proposed to add subpart H, § 414.605 to define several levels of ground ambulance services ranging from BLS to specialty care transport. (Note that the term "ground" refers to both land and water transportation. The definitions and RVUs for each of the levels of service were described in § 414.605, "Definitions.") Also, we proposed that the rate per ground mile for all ground ambulance services would be the same for each level of service.

We stated in the proposed rule that there would be two levels of air ambulance services to distinguish fixed wing from rotary wing (helicopter) aircraft. In addition, to recognize the operational cost differences of the two types of aircraft, there would be two distinct payment amounts for air ambulance mileage. The air ambulance services mileage rate would be calculated per actual loaded (patient onboard) miles flown, expressed in statute miles (that is, ground, not nautical, miles.)

The Committee used an industry consensus document, described below, as the basis for defining the levels of ambulance service.

During 1990, the development of a training blueprint and the evaluation of current levels of training and certification for prehospital providers were identified as priority needs for national emergency medical services (EMS). As a result, the National EMS Training Blueprint Project was formed.

In May 1993, representatives of EMS organizations adopted the National EMS Education and Practice Blueprint consensus document (Blueprint). As stated in the National EMS Education and Practice Blueprint, Executive Summary, printed September 1993, "The Blueprint divides the major areas of prehospital instruction and/or core performance into 16 'core elements.'" For each core element, the Blueprint recommends that there be four levels of prehospital EMS providers "corresponding to various knowledge and skills in each of the core elements." At the "First Responder" level, personnel use a limited amount of equipment to perform initial assessments and interventions. The "EMT-Basic" has the knowledge and skill of the First Responder, but is also qualified to function as the minimum staff for an ambulance. "EMT-Intermediate" personnel has the knowledge and skills identified at the First Responder and EMT-Basic levels, but is also qualified to perform essential advanced techniques and to administer a limited number of medications. The "EMT-Paramedic," in addition to having the competencies of an EMT-

Intermediate, has enhanced skills and can administer additional interventions and medications.

Since the release of the Blueprint, a consensus panel of EMS educators has recommended that the Department of Transportation, National Highway Traffic and Safety Administration (DOT/NHTSA) revise the document. DOT/NHTSA has accepted the recommendation of the panel and expects to release a revised Blueprint or an equivalent document in the near future.

To request a copy of the National Emergency Medical Services Education and Practice Blueprint, please fax your request to: NHTSA/EMS Division, (202) 366–7721. Please include your name and address. Because of staffing and resource limitations NHTSA will forward the requested document via regular mail.

We proposed the following seven levels of ambulance services.

a. Basic Life Support (BLS)—When medically necessary, the provision of basic life support (BLS) services as defined in the National Emergency Medical Services EMS Education and Practice Blueprint for the Emergency Medical Technician-Basic (EMT-Basic) including the establishment of a peripheral intravenous (IV) line.

b. Advanced Life Support, Level 1 (ALS1)—When medically necessary, this is the provision of an assessment by an advanced life support (ALS) ambulance provider or supplier or the furnishing of one or more ALS interventions. An ALS assessment is performed by an ALS crew and results in the determination that the beneficiary's condition requires an ALS level of care, even if no other ALS intervention is performed. An ALS provider or supplier is defined as a provider or supplier whose staff includes an individual trained to the level of the EMT-Intermediate or Paramedic as defined in the National EMS Education and Practice Blueprint. An ALS intervention is defined as a procedure beyond the scope of an EMT-Basic as defined in the National EMS Education and Practice Blueprint. These definitions are discussed later in the "Discussion of Public Comments on the Proposed Rule" section.

c. Advanced Life Support, Level 2 (ALS2)—When medically necessary, the administration of at least three different medications or the provision of one or more of the following ALS procedures:

- Manual defibrillation/cardioversion.
- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line.

d. Specialty Care Transport (SCT)—When medically necessary, for a critically injured or ill beneficiary, a level of interhospital service furnished beyond the scope of the paramedic as defined in the National EMS Education and Practice Blueprint. This is necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).

e. Paramedic ALS Intercept (PI)—These services are defined in § 410.40(c) "Paramedic ALS Intercept Services". These are ALS services furnished by an entity that does not provide the ambulance transport. Under limited circumstances, Medicare payment may be made for these services. (To obtain additional information about paramedic ALS intercept services, please refer to the March 15, 2000 final rule (65 FR 13911).)

f. Fixed Wing Air Ambulance (FW)—We proposed that fixed wing air ambulance services would be covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by land vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

g. Rotary Wing Air Ambulance (RW)—We proposed that rotary wing (helicopter) air ambulance services are covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by ground vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

B. Current Payment System

The Medicare program pays for ambulance services on a reasonable cost basis when furnished by a provider and on a reasonable charge basis when furnished by a supplier. (For purposes of this discussion, the term "provider" means all Medicare-participating institutional providers that submit claims for Medicare ambulance services (hospitals, including critical access hospitals (CAHs); skilled nursing facilities (SNFs); and home health agencies (HHAs).) The term "supplier" means an entity that is other than a provider. See § 400.202.) The reasonable charge methodology bases payment for ambulance services furnished by ambulance suppliers on the lowest of the customary, prevailing, actual, or inflation indexed charge (IIC).

The following describes the current reasonable charge billing methods for ambulance services:

- Method 1: A single, all-inclusive charge reflecting all services, supplies, and mileage.
- Method 2: One charge reflecting all services and supplies (base rate) with a separate charge for mileage.
- Method 3: One charge for all services and mileage, with a separate charge for supplies.
- Method 4: Separate charges for services, mileage, and supplies.

C. Organization of the Preamble

The headings for the discussion of various policy issues in this final rule correspond to the headings used in the September 2000 proposed rule. For the convenience of the reader, the analysis of comments and their responses are integrated with the discussion of each issue.

D. Recent Legislation

We do not intend for the aggregate amount of payments under the ambulance fee schedule to be lower than the aggregate amount of payments under the current system. Consequently, as described below, we will adjust the conversion factor (CF) and air ambulance rates if actual experience under the fee schedule is different from the assumptions used to determine the initial CF and air ambulance rates.

We estimate that total spending (the sum of Medicare program payments and beneficiary copayments) for ambulance services over the next five years will be:

Calendar year	Payments ($ billion)
2002	2.7
2003	2.8
2004	2.9
2005	3.0
2006	3.1

These estimates are based on the assumption that the ambulance inflation factor will be 2.2 percent for 2002 and 2.5 percent for years 2003 through 2006, that the ratio of services furnished at the various levels of intensity (for example, BLS versus ALS1 versus ALS2, etc.) will not change and that there will be an increase in Medicare beneficiary enrollment of 0.9, 0.8, 0.9, 1.3 and 1.0 percent in the years 2002 through 2006, respectively. To the extent that any of

these assumptions are different from actual experience, actual payments will be higher or lower than these estimates.

As we indicated in the proposed rule, we will monitor payment data and evaluate whether the assumptions used to establish the original CF (for example, the ratio of the volume of BLS services to ALS services) are accurate. If the actual proportions among the different levels of service are different from the projected amounts, we will adjust the CF accordingly and apply this adjusted CF prospectively. Similarly, if the level of low charge billing is significantly different from the assumed level, we will also adjust the CF and apply such an adjusted CF prospectively.

Over the past 20 years, the Congress has been moving towards fee schedules and prospective payment systems for Medicare payment. In the case of ambulance services, the reasonable charge methodology has resulted in a wide variation of payment rates for the same service. In addition, this payment methodology is administratively burdensome, requiring substantial recordkeeping for historical charge data. The Congress, under the BBA, mandated the establishment of a national fee schedule for payment of ambulance services.

1. Balanced Budget Act of 1997 (BBA)

Section 4531(b)(2) of the BBA added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act requires the establishment of a national fee schedule for payment of ambulance services under Medicare part B through negotiated rulemaking. This section also requires that in establishing the ambulance fee schedule, we will—

- Establish mechanisms to control increases in expenditures for ambulance services as a benefit under part B of the Medicare program;
- Establish definitions for ambulance services that link payments to the types of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors;
- Phase in the fee schedule in an efficient and fair manner; and,
- Require that payment for ambulance services be made only on an assignment-related basis.

In addition, the BBA requires that ambulance services covered under Medicare be paid based on the lower of the actual billed charge or the ambulance fee schedule amount. The law also provides, in a paragraph entitled "Savings," that total payments during the first year of the ambulance fee schedule may be no more than what would have been paid if the ambulance fee schedule were not in effect. In addition, we are implementing the provisions of a regulation proposed in June 1997 that we would have made final prior to the fee schedule, but decided instead to implement coincident with the fee schedule, as discussed below.

Section 4531(c) of BBA 1997 provided for payment of paramedic advanced life support (ALS) intercept services directly to the entity furnishing those services under limited circumstances. Paramedic ALS intercept services are ALS services delivered by paramedics that operate separately from the agency that provides the ambulance transport. This type of service is most often provided for an emergency ambulance transport in which a local volunteer ambulance that can provide only basic life support (BLS) level service is dispatched to transport a beneficiary. If the beneficiary needs ALS services such as EKG monitoring, chest decompression, or IV therapy, another entity dispatches a paramedic to meet the BLS ambulance at the scene or once the ambulance is on the way to the hospital. The ALS paramedics then provide their services to the beneficiary. One statutory criteria for payment is that the service must be furnished in a rural area. Other criteria (for example, the transporting entity must be volunteer) limited the application of this provision. The program defined a rural area as one that was outside any area defined by the Office of Management and Budget as a Metropolitan Statistical Area, (MSA) or New England County Metropolitan Area (NECMA).

2. Balanced Budget Refinement Act of 1999

Section 412 of the BBRA provided a new definition for the term "rural" in the context of the Medicare coverage provision for paramedic ALS intercept services. The BBRA states that, effective for services furnished on or after January 1, 2000:

> "An area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith modification, originally published in the **Federal Register** on February 27, 1992 (57 FR 6725)."

This definition applies only to the Medicare paramedic ALS intercept benefit implemented at § 410.40(c). This is a very limited benefit and to date we know of only one State (New York) with areas that meet the statutory requirements. (See the March 15, 2000 final rule on "Coverage of, and Payment for, Paramedic Intercept Ambulance Services" (65 FR 13911).) For all other ambulance services, the definition of "rural" specified in this final rule will apply.

3. The Medicare, Medicaid, and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000 (BIPA)

BIPA provided the following changes to the ambulance fee schedule that have been incorporated into this rule.

a. Critical Access Hospital (CAH)

The proposed rule would have applied the ambulance fee schedule to all entities furnishing ambulance services to Medicare beneficiaries. Section 205 of BIPA provided that CAHs, or entities owned and operated by them, are paid for ambulance services based on reasonable cost if there is no other ambulance provider or supplier within a 35-mile drive. As a result, these entities are exempt from the ambulance fee schedule described in this final rule. These entities are also exempt from the current cost-per-trip inflation cap applicable to providers. This cap, established by section 4531(a)(1) of the BBA, limits increases in the cost per trip of ambulance services from one year to the next by the consumer price index for all urban consumers, reduced by 1 percentage point. Implementation of section 205 of BIPA requires us to establish a process for a CAH to qualify for this exemption. Such a process was addressed in a separate final rule, "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education; Fiscal Year 2002 Rates, Etc.; Final Rules," published August 1, 2001 (66 FR 39828). The payment policy component is addressed in this rule.

Comment: Some commenters believe that we should pay all CAHs based on cost payment for ambulance services because, in their view, section 1834(g) of the Act requires that CAHs be paid on a reasonable cost basis for all services, not just their services to inpatients and outpatients.

Response: The Congress, in section 205 of BIPA, specifically provides that ambulance services furnished on or after December 21, 2000 by a CAH or an entity owned and operated by a CAH be paid on a reasonable cost basis if the CAH or entity is the only provider or supplier located within a 35-mile drive of the CAH or entity. BIPA did not grant CMS broad authority to pay other CAHs on a cost basis. Therefore, CAHs that do not fall within the ambit of section 205

of BIPA will be paid under the ambulance fee schedule.

b. Rural Ambulance Mileage

The proposed rule would have established payment for rural mileage greater than 17 miles at the same rate as mileage within urban areas. Section 221 of BIPA provided that the payment rate for rural ambulance mileage greater than 17 miles and up to 50 miles be increased by not less than one-half of the additional payment per mile established for the first 17 miles of a rural ambulance trip. We are establishing this rate at one-half of the additional payment per mile established for the first 17 miles of a rural ambulance trip. This amount is the minimum that is required by the plain language of the law and is not discretionary. We believe that proposed rulemaking, which would be necessary to set the amount at a level higher than the minimum, is impracticable in this instance for timely implementation the law. This is consistent with the amount established by the Congress for the period prior to April 1, 2002. We are waiving proposed rulemaking for this provision and will implement it as a final rule with comment period. Therefore, we will accept public comments on this policy.

c. Inflation Factor

The proposed rule would have increased the per trip payments for services furnished in 2001 over the per trip payments for these services furnished in 2000 by an amount equal to the change in the CPI–U reduced by one percent. Section 423 of BIPA provided that the ambulance inflation factor for services furnished during the period July 1, 2001 through December 31, 2001 be equal to 4.7 percent, an increase of two percentage points over the rate in the proposed rule. We have implemented this provision without proposed rulemaking because it was self-implementing, not discretionary for CMS, and did not require us to interpret the law. For that reason, we find notice and comment rulemaking unnecessary.

d. Ground Ambulance Mileage

The proposed rule would have paid for all ground ambulance mileage during a four-year transition period based on a blend of the current payment rate and the fee schedule rate. Section 423 provided that there will be no phased-in blended payment for mileage for ambulance suppliers paid by carriers in those States in which, prior to the fee schedule, the carrier's payment to all suppliers did not include separate payment for all in-county ambulance mileage. Mileage paid by these carriers in these States will be paid based on the full fee schedule amount. This provision does not apply to providers. Because the law does not permit CMS to exercise any discretion in implementing the policy, we find notice and comment rulemaking unnecessary. Therefore, we are waiving proposed rulemaking for this provision and will implement it as a final rule with comment. Therefore, we will accept public comments on this policy.

E. Components of Ambulance Fee Schedule Payment Amounts

Ambulances may be ground, water or air. We proposed that the payment amount for each ambulance service paid under the ambulance fee schedule would be the sum of a base payment amount and a mileage rate. The base payment amount for each air ambulance service paid under the ambulance fee schedule would be the product of two primary factors: (1) A nationally uniform unadjusted base rate; and (2) a geographic adjustment factor for an ambulance fee schedule area.

We proposed that the base payment amount for each ground or water ambulance service paid under the ambulance fee schedule would be the product of three factors—

(1) A nationally uniform relative value for the service;

(2) A geographic adjustment factor for an ambulance fee schedule area; and

(3) A nationally uniform conversion factor (CF) for the service.

We are proceeding with these proposals in this final rule. A detailed description of these factors is discussed in this final rule.

Relative value units (RVUs) measure the value of ambulance services relative to the value of a base level ambulance service. Thus, if the value of the resources necessary to furnish service B is twice the value of the resources needed to furnish service A, service B will have twice as many RVUs as service A. RVUs are multiplied by a CF expressed as a dollar value to produce a payment amount. The RVUs represent, on average, the relative resources associated with the various levels of ambulance services. RVUs for each level of service were established by the Committee.

Because the fee schedule is based on the relative values of different levels of ground ambulance services relative to a basic life support ground ambulance service, a factor is needed to convert the relative value to a dollar amount which is the national base payment rate. In order to determine the CF, the general approach is first to determine the total amount of money available and divide that total by the total number of relative value units that we estimate will be in the fee schedule for the base year. As we describe in more detail below, we used 1998 Medicare ambulance claims data to determine the total RVUs in this calculation.

Section 1834(l)(3) of the Act states that, in establishing the ambulance fee schedule, the Secretary must ensure that the aggregate amount of payment made for ambulance services in calendar year (CY) 2000 (originally expected to be the first year of the fee schedule) does not exceed the aggregate amount of payment that would have been made absent the fee schedule. In the January 22, 1999 notice concerning the meetings of the Committee, we stated that we were postponing final agency action, pending establishment of the ambulance fee schedule, on a proposal to base payment on the level of service (ALS or BLS) actually needed by the beneficiary. We stated our position that the savings that would have been realized through implementation of that policy in 1998 should not be lost to the Medicare program. We estimated that $65 million in program savings would have been realized in 1998 if this policy had been in effect at that time.

Section 4531(b)(3) of the BBA, which added section 1834(l)(3) to the Act, provided that the fee schedule was to be effective for ambulance services furnished on or after January 1, 2000. However, because of other statutory obligations, the scope of systems changes required to implement the ambulance fee schedule, and the need to ensure that our computerized systems were compliant with the Year 2000 (Y2K) requirements, we could not meet this statutory deadline.

In the September 12, 2000 proposed rule, we indicated our intention to implement the fee schedule beginning January 1, 2001. However, although the proposed rule was largely based on an agreement reached as part of a negotiated rulemaking process with representatives of the ambulance industry and other interests, we received over 340 public comments. We did not have sufficient time to carefully consider all comments and publish a final rule in time to implement the fee schedule by January 1, 2001. This final rule establishes an implementation date of April 1, 2002. Our objective is to have the ambulance fee schedule become effective as soon as we can, in this case, April 1, 2002.

F. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provided that the ambulance fee schedule be

established through the negotiated rulemaking process described in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, 5 U.S.C. 581–590). Prior to using negotiated rulemaking under the Negotiated Rulemaking Act, the head of an agency must generally consider whether the following conditions exist:

- There is a need for a rule.
- There are a number of identifiable interests that will be significantly affected by the rule.
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

+ Can adequately represent the interests identified; and,

+ Are willing to negotiate in good faith to reach a consensus on the proposed rule.

- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed timeframe.
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule.
- The agency has adequate resources and is willing to commit its resources, including technical assistance, to the committee.
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment.

Negotiations were conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). We used the services of an impartial convener to help identify interests that would be significantly affected by the proposed rule (including residents of rural areas) and the names of organizations who were willing and qualified to represent those interests. The Negotiated Rulemaking Committee on the Medicare Ambulance Services Fee Schedule (the Committee) consisted of individuals associated with national organizations that represent interests that were likely to be significantly affected by the fee schedule. (Additional information about the negotiations can be found in the January 22, 1999 **Federal Register** notice or may be accessed at our Internet Web site at *http://www.hcfa.gov/medicare/ambmain.htm.*)

To the extent that the proposed rule accurately reflects the Committee Statement, signed on February 14, 2000, each member of the Committee has agreed not to comment on those issues on which consensus was reached.

G. Interaction With the Proposed Rule Published on June 17, 1997

On June 17, 1997, we published a proposed rule (62 FR 32715) in the **Federal Register** to revise and update the Medicare ambulance services regulations at § 410.40. Specifically, we proposed: To base Medicare payment on the level of ambulance service required to treat the beneficiary's condition; to clarify and revise the policy on coverage of nonemergency ambulance services; and to set national vehicle, staff, billing, and reporting requirements. As noted above, section 1834(1)(2) of the Act provides, in part, that in establishing the ambulance fee schedule, the Secretary establish definitions for ambulance services that link payments to the types of services furnished. One of the provisions of the June 17, 1997 proposed rule would have defined ambulance services as either BLS or ALS and linked Medicare payment to the type of service required by the beneficiary's condition. We received a large number of comments on this provision, and, in general, commenters were very concerned about our proposal.

II. Discussion of Public Comments on the Proposed Rule

In response to the publication of the September 2000 proposed rule, we received approximately 340 comments. We received comments from, among others, national ambulance organizations, emergency physician groups and State emergency programs. The majority of the comments addressed issues related to medical condition descriptions lists, physician certification, and definitions of services.

As stated previously, the headings for the policy issues in this final rule correspond to the headings used in the September 2000 proposed rule. For the convenience of the reader, the analysis of comments and their responses are integrated with the discussion of each issue.

A. Proposals Based on Negotiated Rulemaking

In our proposed rule, published September 12, 2000, we discussed the negotiated rulemaking procedures used to formulate our policy for the ambulance fee schedule.

Comment: One commenter stated that we should reconvene the Committee to consider the comments received in response to the proposed rule and also reconvene the Committee annually to consider all future adjustments.

Response: We have decided not to reconvene the Committee. We have adhered to the Committee's recommendations in all cases in which the Committee addressed an issue. Furthermore, some issues were excluded from the negotiation process, and therefore, were not within the purview of the Committee. Also, we believe that reconvening the Committee would significantly postpone the implementation of the regulation.

Comment: Commenters from various regions stated that their organizations were not represented on the Committee.

Some commenters believe that the North American Association of Public Utility Models (NAPUM) should have been included as a participant in the negotiated rulemaking process. NAPUM could have shared its Public Utility Model EMS system in the development of the ambulance fee schedule.

Another commenter stated that the fixed wing air ambulance organizations were not properly represented at the negotiated rulemaking meetings and, therefore, the payment rates for fixed wing air mileage are inadequate.

Response: There was a public solicitation through the **Federal Register** (January 22, 1999) for participation in the negotiated rulemaking process. All interested parties who responded to this public notice were given due consideration by the neutral convener whom we retained for this purpose. Also, the Association of Air Medical Services (AAMS), which has approximately 130 members that are fixed wing providers, represented the air ambulance industry.

In the proposed rule, we proposed the following additions to part 414 based on the recommendations of the Committee.

1. Definitions and Levels of Services

In part 414, we proposed to add subpart H, § 414.605 that would define several levels of ground ambulance services ranging from BLS to specialty care transport (SCT). (Note that the term "ground" refers to both land and water transportation. The definitions and RVUs for each of the levels of service are described in § 414.605, "Definitions.") Also, this section proposed that the mileage rate paid under the fee schedule per ground mile would be the same for each level of ground ambulance service.

In the course of establishing national standards for ALS and BLS during 1990, the development of a training blueprint and the evaluation of current levels of prehospital provider training and certification were identified by the national emergency medical services (EMS) industry as a priority need for EMS. As a result, the National EMS Training Blueprint Project was formed.

In May 1993, representatives of EMS organizations adopted the Blueprint consensus document. This consensus document was used as the basis for defining the levels of service. As stated in the Blueprint, Executive Summary, printed September 1993, "The Blueprint divides the major areas of prehospital instruction and/or core performance into 16 'core elements.'" For each core element, the Blueprint recommended that there be four levels of prehospital EMS providers "corresponding to various knowledge and skills in each of the core elements." At the First Responder level, personnel use a limited amount of equipment to perform initial assessments and interventions.

The EMT-Basic has the knowledge and skill of the First Responder, but is also qualified to function as the minimum staff for an ambulance. EMT-Intermediate personnel has the knowledge and skills identified at the First Responder and EMT-Basic levels, but is also qualified to perform essential advanced techniques and to administer a limited number of medications. The EMT-Paramedic, in addition to having the competencies of an EMT-Intermediate, has enhanced skills and can administer additional interventions and medications.

After the release of the Blueprint, a consensus panel of EMS educators had recommended that DOT/NHTSA revise the document. The Department of Transportation, National Highway Traffic and Safety Administration (DOT/NHTSA) has accepted the recommendation of the panel and is expected to release a revised Blueprint or an equivalent document in the near future.

To request a copy of the National Emergency Medical Services Education and Practice Blueprint, please fax your request to: NHTSA/EMS Division, (202) 366–7721. Please include your name and address. Because of staffing and resource limitations, NHTSA will forward the requested document via regular mail.

Levels of Ambulance Services

Payment for all ambulance services under the fee schedule will be based on a base rate payment. In addition, there will be a separate payment for mileage.

In the proposed rule, we stated that there would be two levels of air ambulance services to distinguish fixed wing from rotary wing (helicopter) aircraft. In addition, to recognize the operational cost differences of the two types of aircraft, there would be two distinct payment amounts for air ambulance mileage. The air ambulance services mileage rate would be calculated per actual loaded (patient on board) miles flown, expressed in statute miles (that is, ground, not nautical, miles).

In the proposed rule, we proposed the seven levels of ambulance services shown below. We expressed the qualifications for staff at the various levels in terms of the Blueprint. As just noted, we are revising the proposed qualifications to indicate that the vehicle staffing will comply with existing State and local laws for each level of service.

a. *Basic Life Support (BLS)*—In the proposed rule, we stated that, when medically necessary, the provision of basic life support (BLS) services is defined in the National Emergency Medicine Services (EMS) Education and Practice Blueprint for the Emergency Medical Technician-Basic (EMT-Basic) including the establishment of a peripheral intravenous (IV) line.

b. *Advanced Life Support, Level 1 (ALS1)*—In the proposed rule, we stated that, when medically necessary, this level of service requires the provision of an assessment by an advanced life support (ALS) ambulance provider or supplier and the furnishing of one or more ALS interventions. An ALS assessment is performed by an ALS crew and results in the determination that the beneficiary's condition requires an ALS level of care, even if no other ALS intervention is performed. The proposed rule also stated that an ALS provider or supplier is defined as a provider trained to the level of the EMT-Intermediate or Paramedic as defined in the National EMS Education and Practice Blueprint. We proposed to define an ALS intervention as a procedure beyond the scope of an EMT-Basic as defined in the National EMS Education and Practice Blueprint.

c. Advanced Life Support, Level 2 (ALS2)—In the proposed rule, we stated that this level of service is defined by, when medically necessary, the administration of at least three different medications or the provision of one or more of the following ALS procedures:

- Manual defibrillation/cardioversion.
- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line.

d. Specialty Care Transport (SCT)—In the proposed rule, we stated that this level of service is defined by, when medically necessary, for a critically injured or ill beneficiary, a level of interhospital service furnished beyond the scope of the paramedic as defined in the National EMS Education and Practice Blueprint. We stated that this service would be necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).

e. Paramedic ALS Intercept (PI)—In the proposed rule, we stated that these services would be defined in § 410.40(c) "Paramedic ALS Intercept Services." These are ALS services furnished by an entity that does not provide the ambulance transport. Under limited circumstances, Medicare payment may be made directly to the entity furnishing paramedic services. (To obtain additional information about paramedic ALS intercept services, please refer to the March 15, 2000 final rule (65 FR 13911).)

f. Fixed Wing Air Ambulance (FW)—In the proposed rule, we stated that fixed wing air ambulance services would be covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by land vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

g. Rotary Wing Air Ambulance (RW)—In the proposed rule, we stated that rotary wing (helicopter) air ambulance services would be covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by ground vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

Comment: In the context of determining when payment would be made at the ALS rate versus the BLS rate, some commenters disagreed with the definitions provided in the National Emergency Medical Services Education and Practice Blueprint (the Blueprint), stating that State definitions and standards differed from this document. Some States license as paramedics individuals who have not completed all of the hours or modules required by the Department of Transportation's National Standard Paramedic Curriculum. Technically, these individuals would not be "trained to the level" of a paramedic as defined in the Blueprint and the resulting National Standard Paramedic Curriculum. Commenters suggested that the definition of a

paramedic should be a person who is licensed by the State at an ALS level, regardless of whether the level of the training of the person meets the definition of "paramedic" as described in the Blueprint or National Standard Paramedic Curriculum.

Several commenters also noted that the definition of BLS is confusing regarding establishment of a peripheral intravenous (IV) line. They further commented that, in many States, BLS personnel are not permitted by State law to establish IV lines. To clarify the definition, the commenters recommended that we make it clear that, when an IV line is established by an ALS crew, this is an ALS intervention that qualifies the trip as an ALS transport.

Response: As a basis for defining the levels of service in the proposed rule, we incorporated the knowledge and skills outlined in the Blueprint. After considering the observations made by commenters and recognizing that the Department of Transportation, National Highway Traffic and Safety Administration has agreed to revise the Blueprint in the near future, we concluded that the knowledge and skill levels outlined in the Blueprint may be contrary to some existing State training standards and requirements. We have chosen instead, to rely on vehicle staffing requirements contained in existing State and local laws. Therefore, we are revising § 414.605 to indicate that payment will be made at the ALS1 level if the service furnished is beyond the skill level of an EMT-Basic in accordance with State and local laws.

Comment: Several commenters noted that the definition of ALS1 differed from that in the Committee Statement. Specifically, the conjunction used in the Committee Statement between "assessment by an advanced life support (ALS) ambulance provider or supplier" and "the furnishing of one or more ALS interventions" was "and/or" rather than "and." In addition, commenters pointed out that the ALS2 definition differed slightly between the preamble of the proposed rule and the proposed regulation text. For ALS2, commenters addressed the Committee Statement definition which was based on the supplier's provision of "three different medications *or* the provision of one or more of the following ALS procedures:

- Manual defibrillation/ cardioversion.
- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line."

The proposed definition at § 414.605 stated "three different medications *and* the provision of one or more of the following ALS procedures:

- Manual defibrillation/ cardioversion.
- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line."

Response: We agree with the commenters that the conjunction was inconsistent with the Committee Statement and, therefore, we are revising the regulation text to be consistent with the Committee Statement. We note, however, that we are using the conjunction "or" because this term carries the same meaning as "and/or."

Comment: Many commenters stated that the proposed definition of ALS assessment is confusing. The definition states that the ALS assessment is one "performed by an ALS crew that results in the determination that the beneficiary's condition requires an ALS level of care." The commenters stated that, in order to be consistent with the Committee Statement, the definition should state that an ALS assessment is one performed by an ALS crew to determine whether the beneficiary's condition requires an ALS level of care. Some commenters suggested that the definition should be revised as follows: "'Advanced Life Support (ALS) assessment' is an assessment of a beneficiary with a medical condition requiring assessment by an ALS crew to determine whether ALS interventions are needed or may be needed during transport."

Response: We agree, and we have clarified the definition of ALS assessment accordingly. We are also clarifying that the ALS assessment is relevant only in an emergency case. While the Committee Statement is silent on this point, we believe that the ALS assessment would not be required in non-emergency or scheduled situations.

Comment: Many commenters stated that we should provide payment for all drugs, both low and high cost. Commenters stated that we had refused to negotiate on the issue of a separate payment for drugs in addition to and apart from the fee schedule payment for the ambulance transport, on the grounds that all drug costs should be included in the base rate. The commenters believe that this position fails to take into account the fact that many ambulance systems are now being forced to pay for drugs that were previously paid for outside of the Medicare payment. These costs, they argue, were not captured in the aggregate ambulance payment amount which we calculated and upon which we would calculate the CF. Therefore, they argue, these costs would not be reflected in the base rates. One way drugs were paid for in the past outside the Medicare ambulance benefit was that a hospital would restock the ambulance without charge for any drugs that had been used. Commenters argue that, if hospitals do not continue restocking, ambulance suppliers will have to bear the cost of these drugs from a base rate that the commenters believe is already too low. The commenters believe that we should allow separate payments for drugs in addition to the ambulance fee schedule payment.

Response: Medicare's drug benefit does not permit a discrete payment for drugs furnished on board an ambulance. Drugs in ambulances have been included in ambulance payment only because they have been considered to be ambulance supplies. The law permits payment for a drug furnished on board an ambulance only if the drug is considered an element of the ambulance service. At the same time, the law does not permit payment under the ambulance benefit other than through the ambulance fee schedule.

As noted above, the BBA required that total payments during the first year of the fee schedule be no more than what would have been paid if the ambulance fee schedule were not in effect. The law provides no means to increase program payments for ambulance services that use new high-cost drugs. It provides only the inflation factor to increase rates under the ambulance fee schedule. With this constraint in mind, the Committee considered, within the structure of the fee schedule, establishing a separate RVU for drugs provided as ambulance supplies above a certain threshold cost. However, the Committee rejected this option. Therefore, payment for these items is included in the base rates for all levels of service.

Comment: Commenters questioned whether oxygen, saline and aspirin are considered medications for purposes of meeting the alternate criterion for the ALS2 level of service that the ambulance supplier provide three different medications.

Response: The proposed definition for an ALS2 level of service provides that this level of service is defined by, when medically necessary, the administration of at least three different medications or the provision of one or more of the following ALS procedures:

- Manual defibrillation/ cardioversion.

- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line.

Only medications requiring a higher level of skill to administer are considered medications for purposes of this definition. We are clarifying in the final rule that payment at the ALS2 level requires the administration of at least three medications by intravenous push/bolus or by continuous infusion, excluding crystalloid, hypotonic, isotonic, and hypertonic solutions (for example, Dextrose, Normal Saline, Ringer's Lactate). Therefore, oxygen, saline and aspirin are not considered as medications for the purpose of determining whether an ALS2 level of care has been furnished.

Comment: Many commenters wanted to know whether three doses of the same medication on one transport warrant classifying the service as an ALS2 service.

Response: Three separate administrations of the same medically necessary medication (of the kind specified in the criteria for ALS2) during a single transport qualifies for payment at the ALS2 level.

Comment: Many commenters requested clarification regarding SCT. In particular, the commenters asked that we further define the phrase "paramedics with additional training." A commenter suggested that we include a reference to any State or local standards or protocols that define SCT training above and beyond the paramedic curriculum and a reference to a curriculum approved by the medical director of an EMS or ambulance system and shared with the carrier.

Response: As indicated in the response concerning the Blueprint, above, we are revising § 414.605 to indicate that vehicle staffing must be in compliance with existing State and local laws. We now define "paramedics with additional training" in terms of State or local authority that governs the licensing and certification of EMS personnel in the State in which a paramedic is licensed. It seems possible, even likely that there is no comparable definition in every State.

Comment: Some commenters asked whether the code for the SCT level service may be used as a code for a trip from a facility to an air ambulance and from the air ambulance to the final facility destination.

Response: Yes, the SCT level of service may be used in transporting a beneficiary from the hospital to an air ambulance and then from the air ambulance to the second hospital, if the SCT criteria are met.

Comment: Some commenters believe that paramedic intercept services will suffer because of the failure in the fee schedule to recognize paramedic intercept in States other than New York as a cost-effective means of the delivery of prehospital care. Commenters stated that it is important to provide adequate payment for paramedic intercept in all areas of the country.

Response: As described in the regulations in § 410.40(c) (and also in Program Memorandum B–00–01 issued in January, 2000), under the Medicare statute, payment may be made directly to the intercept supplier for intercept services only if—

(a) The intercept service is provided in a rural area under a contract with one or more volunteer ambulance services;

(b) The volunteer ambulance supplier is certified to provide ambulance services;

(c) The volunteer ambulance supplier provides services only at the BLS level at the time of the intercept; and

(d) The volunteer ambulance supplier is prohibited by State law from billing anyone for the service furnished. The entity providing the intercept services must also be qualified to provide services under Medicare and must bill all patients receiving its intercept services.

At this time, to the best of our knowledge, only the State of New York has areas that meet these four criteria. In all other areas, the BLS level ambulance supplier must bill the program for an appropriate level of service. If the paramedic intercept supplier wants to receive payment, it would have to make an agreement with the volunteer supplier regarding payment.

Comment: One commenter asked whether the new levels of ALS2 and SCT under the fee schedule would be blended with the current ALS emergency code payment rates during the transition period.

Response: For both ALS2 and SCT, the "old" portion of the blended amount is the allowance for ALS emergency services.

2. Emergency Response Adjustment Factor

We proposed to add § 414.610(c)(1) to state that, for the BLS and ALS1 levels of service, an ambulance service that qualifies as an emergency response service would be assigned higher RVUs to recognize the additional costs incurred in responding immediately to an emergency medical condition. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call. No emergency response adjustment factor applies to PI, ALS2, SCT, FW, or RW.

Comment: Some commenters stated that the definition of "emergency response" for purposes of the fee schedule in the implementing instructions (Program Memorandum AB–00–88) is inconsistent with the definition in the proposed rule and with the definition in the Committee Statement. The definition in AB–00–88 is:

An emergency response is one that, at the time the ambulance supplier is called, is provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the beneficiary's health in serious jeopardy; in impairment to bodily functions; or in serious dysfunction to any bodily organ or part.

The definition in the Committee Statement is:

For the BLS and ALS1 levels of service, an ambulance service that qualifies as an emergency response will be assigned a higher relative value to recognize the additional costs incurred in responding immediately to an emergency medical condition. An immediate response is one in which the ambulance provider begins as quickly as possible to take the steps necessary to respond to the call. There is no emergency modifier for PI, ALS2, or SCT.

Response: We agree with the commenter, and we will be changing the definition of "emergency response" in the final regulation to conform to the definition in the Committee Statement with one exception. We have decided to delete from the Committee Statement's definition the phrase "emergency medical condition" because the purpose of the higher payment for the emergency medical condition is to recognize the additional cost required in order to be prepared to respond immediately to a call (for example, from a "911" service) when it is received without regard to the condition of the beneficiary. The nature of the beneficiary's condition is considered in determining whether an ambulance transport was medically necessary and in determining the level of service (for example, BLS-Emergency, ALS1-Emergency or ALS2). However, the emergency rate is paid based on the immediate response to the 911-type call and not based on the services furnished

to the beneficiary. Therefore, we are revising the definition as follows:

Emergency response means responding immediately at the BLS or ALS1 level of service to a 911 call or the equivalent in areas without a 911 call system. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call.

We note that the definition of "emergency response" here is intended only to describe the circumstances under which higher payment would be made for services and its use is limited to this context. It would have no effect on other program definitions of "emergency."

3. Operational Variations

We proposed to add § 414.610(a), which would state that the ambulance fee schedule applies to all entities that furnish ambulance services, regardless of type. All public or private, for profit or not-for-profit, volunteer, government-affiliated, institutionally-affiliated or owned, or wholly independent supplier ambulance companies, however organized, would be paid according to this ambulance fee schedule, with the exception of CAHs as discussed above.

4. Regional Variations

a. Cost of living differences

In our proposed rule, we proposed that the payment for ambulance services would be adjusted to reflect the varying costs of conducting business in different regions of the country. We stated that we would adjust the payment by a geographic adjustment factor (GAF) equal to the practice expense (PE) portion of the geographic practice cost index (GPCI) for the Medicare physician fee schedule. (For purposes of this document, we use the abbreviation "GPCI" to mean the PE portion of the GPCI.) The GPCI is an index that reflects the relative costs of certain components of a physician's cost of doing business (for example, employee salaries, rent, and miscellaneous expenses) in one area of the country as compared to another. The geographic areas would be the same as those used for the physician fee schedule. (A detailed discussion of the physician fee schedule areas can be found in the July 2, 1996 proposed rule (61 FR 34615) and the November 22, 1996 final rule (61 FR 59494).)

We proposed that the GPCI would be applied to 70 percent of the base payment rate for ground ambulance services; this percentage approximates the portion of ground ambulance service costs that are represented by salaries. Similarly, we proposed that the GPCI would be applied to 50 percent of the base payment rate for air ambulance services. The GPCI would not be applied to the mileage payment rate. In addition, the applicable GPCI would be based on the geographic location at which the beneficiary is placed on board the ambulance.

We proposed to use the most recent GPCI; the physician fee schedule law requires that the GPCI be updated every 3 years. The latest revision became effective January 1, 2001. The updated data were published in the November 1, 2000 final rule on the physician fee schedule (65 FR 65585).

Comment: A few commenters stated that the practice expense portion of the physician fee schedule GPCI does not properly reflect the cost of living when calculating payment for ambulance services.

Response: We proposed using the practice expense portion of the GPCI, as described in the physician fee schedule final rule published in the **Federal Register** on November 1, 2000 (65 FR 65585). We based our proposal on the Committee Statement that using the PE of the GPCI is the most appropriate means available to measure the geographic differences in the costs of providing ambulance services. The components of the PE portion of the GPCI (for example, personnel and supplies) are similar to the components of ambulance services and the geographical variations in these costs for ambulances would therefore be similar to the cost variations for physician practices. Also, based on data available to the Committee, it recommended, and we agree, that the labor share of the costs of ambulance services is approximately 70 percent of the ground and 50 percent of the air ambulance cost. Therefore, the GPCI will apply to only 70 percent of the ground and 50 percent of the air ambulance base rates. We are not adjusting the mileage rates.

Comment: Some commenters believe that both legs of a round trip should be paid on the basis of the initial point of pick-up of the beneficiary, and that both legs of a scheduled round trip crossing GPCI or State lines should be billed to the carrier with jurisdiction for the initial point of pick-up. The commenters state that, given the proposed rule, suppliers may have to bill different carriers for each of two legs on the same round trip. Also, beneficiaries are likely to be confused by bills which indicate different charges for each leg of a round trip, if it does not begin in a rural area. Finally, rural suppliers could lose the rural adjustment for the second leg of a round trip. Some commenters also believe the point of pick-up is not the best criterion for establishing level of payment. There were some commenters who felt that the GPCI should be matched to the location of the ambulance company. Also, some commenters wanted clarification on trips originating in another carrier jurisdiction.

Response: The Committee determined that the most equitable way to apply the GPCI, as well as the rural adjustment payment, was by the point of pick-up and not by the destination, location of the ambulance company, or where the ambulance is garaged. One concern identified by the Committee with using the location of the company or the place where the ambulance is garaged was the relative ease of moving the location of the company or garage to achieve higher payment. A second issue was that any individual trip in a rural area would likely be longer and prevent an ambulance from furnishing an additional trip, thereby reducing utilization, whether the ambulance was garaged in an urban or rural area. Considering each leg of a round trip separately gives effect to the Committee's determinations. Moreover, considering each leg separately achieves administrative simplicity and greater administrative accuracy in making payments.

Comment: One commenter suggested that the Medicare hospital area wage index be used in place of the GPCI, since many of the ambulance providers are hospital-based.

Response: The Committee decided to use the GPCI, not the hospital area wage index. As stated above, the components of the ambulance service are more similar to the components of the PE portion of the GPCI than they are to the components of the hospital wage index. Also, fewer than 15 percent of ambulance services furnished to Medicare beneficiaries are hospital-based, so we do not see the hospital wage index as more appropriate than the GPCI. Thus, we will continue to use the practice expense GPCIs from the physician fee schedule.

b. Services furnished in rural areas

We proposed to add § 414.610(c)(1)(v), which stated that, for ground ambulance services in rural areas, a 50 percent increase is applied to the mileage rate for each of the first 17 miles; the regular (urban) mileage allowance applies to every mile over 17 miles. For air ambulance services, we stated, in rural areas, that a 50 percent increase is applied to the total payment for air services, both mileage and base rate. We proposed the 50 percent rural increase for the first 17 miles in

consideration of the circumstances of isolated, essential ambulance suppliers (that is, when there is only one ambulance service in a given geographic area) which may not furnish many trips over the course of a typical month because of a small rural population. While we recognize that this methodology is not sufficiently precise to limit the rural bonus payment to only those rural ambulances that are isolated, essential, low-volume (the definition of rural we are proposing is not as precise as other alternatives), we proposed an adjustment to increase the rate of payment for mileage if the location at which the beneficiary is placed on board the ambulance is located in a rural area. We proposed to define a rural area to be an area outside a Metropolitan Statistical Area (MSA) or a New England County Metropolitan Area, or an area within an MSA identified as rural, using the Goldsmith modification.

The Goldsmith modification evolved from an outreach grant program sponsored by the Office of Rural Health Policy of the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services. This program was created to establish an operational definition of rural populations lacking easy geographic access to health services in large counties with metropolitan cities. Using 1980 census data, Dr. Harold F. Goldsmith and his associates created a methodology for identifying rural census tracts located within a large metropolitan county of at least 1,225 square miles. However, these census tracts are so isolated by distance or physical features that they are more rural than urban in character. Additional information regarding the Goldsmith modification can be found on the Internet at *http://www.ruralhealth.hrsa.gov/Goldsmith.htm.*

We could not easily adopt and implement, within the constraints necessary to implement the fee schedule timely, a methodology for recognizing geographic population density disparities other than MSA/non-MSA. However, we will consider alternative methodologies that may more appropriately address payment to isolated, low-volume rural ambulance suppliers. Thus, the rural adjustment in this rule is a temporary proxy to recognize the higher costs of certain low-volume rural suppliers.

Several difficult issues will need to be resolved to establish more precise criteria for suppliers that should receive the rural adjustment. Examples of such issues include: (1) Appropriately identifying an ambulance supplier as rural; (2) identifying the supplier's total ambulance volume (because Medicare has a record only of its Medicare services); and (3) identifying whether the supplier is isolated, because some suppliers might not furnish services to Medicare beneficiaries (thus, Medicare would have no record of their existence) and one of these suppliers might be located near an otherwise "isolated" supplier. Addressing these issues in some cases will require the collection of data that are currently unavailable. We intend to work with the industry and with the Office of Rural Health Policy to identify and collect pertinent data as soon as possible.

We stated in our proposed rule that the application of the rural adjustment would be determined by the geographic location at which the beneficiary is placed on board the ambulance. Under the proposed rule, the rural adjustment would have been made using the following methodology:

- Ground—A 50 percent add-on applied to only the mileage payment rate for the first 17 loaded miles and a 25 percent add-on applied to only the mileage payment rate for miles 18 through 50.
- Air—A 50 percent add-on applied to the base rate and to all of the loaded mileage.

Comment: Several commenters expressed concern that there should be a more precise definition of low-volume rural ambulance suppliers and that the rural payment rate should be higher. They suggested that we could use data from the Office of Rural Health (ORH) or the Administration on Aging that would give a more precise determination than the MSA/non-MSA classification. Another commenter suggested using any areas that are designated as rural by the State. One commenter suggested that until a better rural adjustment is implemented, rural suppliers and providers should be paid under their current payment methodologies.

Response: We are exploring alternative means for identifying low-volume rural suppliers. We are exploring data from other sources, including the ORH, which has sponsored a study, Rural-Urban Commuting Areas (RUCA). This study was performed by the University of Washington Rural Health Research Center. We anticipate that a more precise definition of low-volume rural suppliers will reduce the number of suppliers who qualify for the higher rural payment, allowing us to better target the payment increases to these suppliers while adhering to the aggregate payment limit provided in the law. We do not have the legal authority to exempt rural ambulance services from the fee schedule and pay them under the current methodology with the exception of certain CAHs. (See discussion of section 205 of BIPA.) In addition, BIPA provided that the payment rate for rural ambulance mileage greater than 17 miles and up to 50 miles be increased by not less than one-half of the additional payment per mile established for the first 17 miles of a rural ambulance trip.

Comment: A few commenters suggested that we adopt a more precise means of identifying rural areas for the fee schedule, using zip codes rather than MSAs as the basis for identification.

Response: We are currently using zip codes to identify areas. However, we identify all zip codes as urban or rural, based on whether the zip code is located in an MSA or not, including the Goldsmith modifications. The zip code is the basis for determining point of pick-up and the payment of claims. As stated above, we are examining other alternatives for identifying rural and urban areas more precisely.

Comment: Some commenters asked if the rural modifier applies if the supplier bills less than $5 for mileage.

Response: The law requires that payment be based on the lower of the fee schedule amount or the actual charge. If the supplier/provider's charge for mileage is less than the rural mileage fee schedule amount, then payment is based on the lower actual billed amount.

Comment: One commenter suggested that we double the payment to small, rural hospital ambulance providers in the following categories: sole community provider hospitals, hospitals eligible for the CAH program, and hospitals under 100 beds.

Response: The Committee Statement does not include such a provision, and we would point out that, because of the requirements of section 1834(l)(3) of the Act, increased payments under such a provision would need to be offset by reduced payments to other ambulance providers and suppliers. Moreover, there is no authority to exempt these small rural hospitals from the fee schedule except as provided by the Congress in section 205 of BIPA. That section provides that only CAHs that are the only ambulance service provider/supplier within a 35-mile drive will be exempt from the fee schedule and will be paid based on their reasonable cost.

5. Mileage

We proposed adding § 414.610(c)(1)(iii) that would state that

mileage would be paid separately from the base rate. The payment for mileage reflects the costs attributable to the use of the ambulance vehicle (for example, maintenance and depreciation) which increase as the vehicle's mileage increases. Based on the Committee's agreement, the mileage rates for the base year 1998 would be as follows: $5 per mile for ground ambulance, $6 per mile for fixed wing ambulance, and $16 per mile for rotary wing ambulance. These rates will be adjusted by the ambulance inflation factor. However, payment for some mileage in rural areas is made at a higher rate as discussed in section II.A.4.b. of this final rule.

6. Structure of the Fee Schedule for Ambulance Services

We proposed in § 414.610(a) that the fee schedule payment for ambulance services would equal a base rate payment plus payments for mileage and applicable adjustment factors. (See Table 1 for a description of the structure of the ambulance fee schedule.)

7. Ambulance Inflation Factor

We proposed adding § 414.615, "Transition methodology for implementing the ambulance fee schedule," which would state that the ambulance fee schedule would include the ambulance inflation factor specified in section 1834(l)(3) of the Act (recently amended by BIPA) and discussed below.

8. Phase-in Methodology

We proposed adding § 414.615 that would provide for a 4-year transition period, as the result of the Committee agreement. (The phase-in schedule is described in section IV of this preamble.)

B. Proposed Changes Not Based on Negotiated Rulemaking

In the September 12, 2000 proposed rule, we proposed changes to certain policies that were not within the scope of the negotiated rulemaking process. These proposed changes were as follows:

1. Coverage of Ambulance Services

In § 410.40(b), we proposed revising the introductory language to provide a cross-reference to § 414.605 for a description of the specific levels of services. We proposed to revise paragraph § 410.40(d)(1) to state that transportation includes fixed wing and rotary wing ambulances. Also, we proposed revising § 410.40(d)(3) by adding two options to document medical necessity.

2. Physician Certification Requirements

On January 25, 1999, we published a final rule (64 FR 3637) that updated Medicare coverage policy concerning ambulance services. That final rule provided the documentation requirements for coverage of nonemergency ambulance services for Medicare beneficiaries. The rule requires ambulance suppliers to obtain, from the beneficiary's attending physician, a written order certifying the medical necessity of nonemergency scheduled and unscheduled ambulance transports. The final rule became effective February 24, 1999.

Our present regulations (at §§ 410.40(d)(2) and 410.40(d)(3)) set forth the requirements for scheduled and unscheduled nonemergency ambulance transports. The regulations require ambulance suppliers to obtain, from the beneficiary's attending physician, a written physician statement certifying the medical necessity of requested ambulance transports.

Section 410.40(d)(3)(i) specifies that, in cases when a beneficiary living in a facility and under the direct care of a physician requires nonemergency, unscheduled transport, the physician's certification can be obtained up to 48 hours after transport. After publication of this rule, we were made aware of instances in which ambulance suppliers, despite having provided ambulance transports, were experiencing difficulty in obtaining the necessary physician certification statements within the required 48-hour timeframe.

While we still believe that the 48-hour timeframe is the appropriate standard, we recognize that there may be instances when, not through fault of their own, it may not be possible for the ambulance suppliers to meet the requirement. Therefore, we have determined that there is a need to revise and clarify this requirement (as described in § 410.40, "Coverage of ambulance services," paragraph (d)(3)).

We proposed that, before submitting a claim, the ambulance supplier must obtain—

(1) A signed physician certification statement from the attending physician; or

(2) If the ambulance supplier is unable to obtain a signed physician certification statement from the attending physician, a signed physician certification must be obtained from either the physician, physician assistant, nurse practitioner, clinical nurse specialist, registered nurse, or discharge planner who is employed by the hospital or facility where the beneficiary is being treated and who has personal knowledge of the beneficiary's condition at the time the transport is ordered or the service was furnished (the term "physician certification statement" will also be applicable to statements signed by other authorized individuals); or

(3) If the supplier is unable to obtain the required statement as described in (1) and (2) above within 21 calendar days following the date of service, the ambulance supplier must document its attempts to obtain the physician certification statement and may then submit the claim. Acceptable documentation must include a signed return receipt from the U.S. Postal Service or similar delivery service. A signed return receipt will serve as documentation that the ambulance supplier attempted to obtain the required physician certification statement from the beneficiary's attending physician.

In all cases, the appropriate documentation must be kept on file and, upon request, presented to the carrier or intermediary. It is important to note that the presence of the signed physician certification statement does not necessarily demonstrate that the transport was medically necessary. The ambulance supplier must meet all coverage criteria in order for payment to be made.

Comment: Several commenters, including a national ambulance association and an association representing medical professionals, state that the proposed regulation permits physician certification statements to be signed by physician assistants (PA), nurse practitioners (NP), and clinical nurse specialists (CNS), but only if employed by the facility in which the beneficiary is being treated. The commenters state, however, that, in most cases, practitioners are employed not by the facility but by the attending physician. The commenters recommended that the requirements of § 410.40(d)(3)(iii) be revised to specify that, in keeping with Medicare regulations, the PA, NP, or CNS may also be employed by the attending physician.

Response: We agree with the commenters and are revising § 410.40(d)(3)(iii) to clarify that the PA, NP, or CNS may be employed either by the facility or by the beneficiary's attending physician.

Comment: Many commenters recommended that we revise § 410.40(d)(3)(iv) to conform to Program Memorandum B–00–09 that clarified the circumstances under which a physician

certification is required for both scheduled and unscheduled transports.

Response: Program Memorandum B–00–09 was issued in response to an inquiry that specifically addressed the 48-hour time requirement set forth in § 410.40(d)(3)(i). The program memorandum specifies that, in cases where a beneficiary who is living in a facility and who is under the direct care of a physician requires nonemergency, unscheduled transport, the physician's certification can be obtained 48 hours after transport has been provided. Based on comments, we are, however, revising the regulation to clarify that § 410.40(d)(3) is applicable to nonrepetitive, nonemergency, scheduled ambulance services. In specifying that the rule applies to nonrepetitive transports, we are aware that § 410.40(d)(2), as currently written, contains a requirement that suppliers obtain the required documentation no earlier than 60 days before the date the service is furnished. We are revising § 410.40(d)(2) to clarify that the 60-day requirement is applicable only to repetitive transports, not nonrepetitive ones.

Comment: Many commenters, including a national ambulance association, expressed a concern that carriers may be interpreting the revised definition of "bed confined" to mean that the beneficiary be bed-confined even in cases where the medical condition of the beneficiary would otherwise indicate that transportation by means other than ambulance would be contraindicated. The commenters recommended that § 410.40(d)(1) be revised as follows:

For nonemergency transportation, transportation by ambulance is appropriate if the beneficiary is bed-confined or if his or her medical condition, regardless of bed confinement, is such that transportation by ambulance is medically required. In determining whether a beneficiary is bed-confined, the following criteria must be met:

(i) The beneficiary is unable to get up from the bed without assistance.

(ii) The beneficiary is unable to ambulate.

(iii) The beneficiary is unable to sit in a chair or wheelchair.

Response: In the June 17, 1997 proposed rule (62 FR 32719), these three criteria were developed to define bed-confinement. These criteria identify individuals who may need ambulance services: we identified as bed-confined only those individuals who are "completely confined to bed and unable to tolerate any activity out of bed." Subsequent instructional guidelines (PM AB–99–53, AB–99–83, AB–00–103) were issued in an effort to clarify that the bed-confined criteria are not meant to be the sole criteria in determining medical necessity; bed-confinement is one factor to be considered. It is important that all factors relating to the beneficiary's condition are considered in evaluating whether the medical necessity criteria for ambulance services have been met. As always, it is the responsibility of the ambulance supplier to furnish complete and accurate documentation of the beneficiary's condition to demonstrate that the ambulance service being furnished meets the medical necessity criteria.

It is not our intent either to require that the bed-confined condition be met in every case in order for an ambulance transport to be covered or to mandate coverage of an ambulance transport solely because a beneficiary is bed-confined.

We agree with the commenters that our proposed revision was unclear. We are revising proposed § 410.40(d)(1). In addition to the identifying criteria on bed-confinement, the final rule will now state that:

> For nonemergency ambulance transportation, transportation by ambulance is appropriate if the beneficiary is bed-confined and it is documented that the beneficiary's medical condition is such that other methods of transportation are contraindicated, or if his or her medical condition, regardless of bed-confinement, is such that transportation by ambulance is medically required. In determining whether a beneficiary is bed-confined, the following criteria must be met: * * *

3. Payment During the First Year

As explained below in more detail, we stated that we would use the universe of claims paid in 1998 (reduced by the $65 million savings that would have been realized through implementation of the BLS and ALS definitions proposed in the June 17, 1997 proposed rule (62 FR 32718)) to establish the CF and would index the 1998 dollars to CY 2002 dollars using the compounded inflation factors derived from section 1834(l)(3) of the Act. (The transition and the inflation factors are described in § 414.615.)

4. Billing Method

In proposed § 414.610, we stated that, after the transition period, we would bundle into the base rate payment all items and services furnished within the ambulance benefit. This would eliminate billing on an itemized basis for any items and services related to the ambulance service (for example, oxygen, drugs, extra attendants, and EKG testing). In addition, only the base rate code and the mileage code would be used to bill Medicare. (This decision was made in accordance with section 1834(l)(7) of the Act, which gives us the authority to specify a uniform coding system, as well as with section 1834(l)(2)(B) of the Act.) During the transition period, suppliers who currently use billing methods 3 or 4 may continue to bill for supplies separately (see section I.B. for a description of these billing methods).

5. Local or State Ordinances

In proposed § 414.610, we stated that, regardless of any local or State ordinances that contain provisions on ambulance staffing or furnishing of all ambulance services by ALS suppliers, we would pay the appropriate ambulance fee schedule rate for the services that are actually required by the condition of the beneficiary. We proposed this policy pursuant to the Medicare statutory requirement (see section 1834(l)(2)(B) of the Act) to use definitions of services that link payments to the types of services furnished.

6. Mandatory Assignment

In proposed § 414.610, we stated that, effective January 1, 2001, all payments for ambulance services must be made on an assignment-related basis, as mandated by section 1834(l)(6) of the Act. Ambulance suppliers must accept the Medicare allowed charge as payment in full and not bill the beneficiary any amount other than unmet Part B deductible or coinsurance amounts. There is no transitional period for mandatory assignment.

Comment: One commenter asked whether the fee schedule and mandatory assignment apply when Medicare is the secondary payer.

Response: Yes, both the ambulance fee schedule and mandatory assignment apply when Medicare is the secondary payer.

Comment: Several commenters objected to the requirement of mandatory assignment for claims when the fee schedule is implemented. They claim that because the rates in some areas are so low, some ambulance suppliers will go out of business without balance billing. One commenter indicated that we have the discretion to delay implementation of mandatory assignment until the end of the phase-in period. The commenter also requested clarification that mandatory assignment pertains only to services that are covered by Medicare.

Response: Mandatory assignment is required by section 1834(l)(6) of the Act.

We do not agree that there is discretion to delay its implementation until the fee schedule is fully phased-in. The implementation date given in the proposed rule will be changed to coincide with the actual implementation of the fee schedule. Historically, ninety-five percent of ambulance services have been submitted under assignment, and, while the fee schedule redistributes payments, we do not anticipate that the assignment requirement is a major issue nationally. It is correct that mandatory assignment pertains only to Medicare covered services.

Comment: Some commenters asked whether the provider/supplier may bill the beneficiary for the non-covered charges for transportation to a facility beyond the nearest appropriate facility, or whether mandatory assignment prevents the provider/supplier from billing for this additional mileage.

Response: Mandatory assignment does not preclude billing for this additional mileage. Mandatory assignment refers only to services that are covered by the Medicare program.

Comment: Some commenters asked about the correlation between "Medicare+Choice" (M+C) plan payments and the ambulance fee schedule. The commenters asked if the amount paid by M+C plans is affected by the fee schedule amounts and if the liability of M+C enrollees is affected by the mandatory assignment requirement for the fee schedule.

Response: For ambulance services that are under contract with the plan, Medicare rates do not affect the payment amounts by the M+C or the enrollee's copay. For ambulance services that are not under contract (for example, out-of-area emergency transports), the M+C is liable for the Medicare allowance in that area less any copay that the beneficiary pays pursuant to the M+C plan's rule for coinsurance.

7. Miscellaneous Payment Policies

The following payment policies were in effect before publication of the proposed rule; however, we used the proposed rule as an opportunity to clarify them.

a. Multiple Patients

Occasionally, an ambulance will transport more than one patient at a time. (For example, this may happen at the scene of a traffic accident.) In this case, we proposed to prorate the payment as determined by the ambulance fee schedule among all of the patients in the ambulance. If two patients were transported at one time, and one was a Medicare beneficiary and the other was not, we would make payment based on one-half of the ambulance fee schedule amount for the level of medically appropriate service furnished to the Medicare beneficiary. The Medicare Part B coinsurance, deductible, and assignment rules would apply to this prorated payment.

Similarly, if both patients were Medicare beneficiaries, payment for each beneficiary would be made based on half of the ambulance fee schedule amount for the level of medically appropriate services furnished to each beneficiary. The Medicare Part B coinsurance, deductible, and assignment rules would apply to these prorated amounts.

Comment: Some commenters disagree with our paying only the rate for one trip if two patients are transported. The commenters contend that it is not true that transporting two or more patients in the same vehicle costs no more than transporting one patient. Additional time will be required to load and unload each patient. Each patient will require specific individual care. The supplier will also incur additional liability for each patient for whom it is responsible. The commenters believe that one mileage fee should be paid, but that two base rates should be paid.

Response: With respect to multiple patient transports, we agree with the commenters that there would be, on average, a higher cost for multiple patient transports than for those with only a single patient onboard. While commenters stated that an extra attendant would be onboard and additional supplies would be used for multiple patients, we do not believe this would always be true. Therefore, if two patients are transported simultaneously, for each Medicare beneficiary we will allow 75 percent of the payment allowance for the base rate applicable to the level of care furnished to that beneficiary. If three or more patients are transported simultaneously, then the payment allowance for the Medicare beneficiary (or each of them) is equal to 60 percent of the service payment allowance applicable for the level of care furnished to the beneficiary. However, a single payment allowance for mileage would continue to be prorated by the number of patients onboard. Also, we are establishing a modifier to identify these claims.

b. Pronouncement of Death

In the proposed rule, we stated that there are three rules that apply to ambulance services and the pronouncement of death. First, if the beneficiary was pronounced dead by an individual who is licensed to pronounce death in that State prior to the time that the ambulance is called, no payment would be made. Second, if the beneficiary is pronounced dead after the ambulance is called but before the ambulance arrives at the scene, payment for an ambulance trip would be made at the BLS rate, but no mileage would be paid. Third, if the beneficiary is pronounced dead after being loaded into the ambulance, payment would be made following the usual rules (that is, the same level of payment would be made as if the beneficiary had not died).

Comment: Some commenters suggested that we pay at the ALS rate if the crew attempts to resuscitate, even though they may fail. Also, some commenters believe that the pronouncement of death needs to be clarified further, so that unnecessary transportation will be limited.

Response: Program payment may be made only for medically necessary ambulance transports. There is no basis for us to pay under the ambulance benefit for services such as attempts to resuscitate, if no ambulance transport occurs. In this final rule, we are setting forth the following criteria to apply in the pronouncement of death:

- If the beneficiary is pronounced dead by an individual who is authorized by the State to pronounce death prior to the time the ambulance is called, no payment will be made.
- If the beneficiary is pronounced dead by an individual who is authorized by the State to pronounce death prior to the arrival of the ambulance, but after it is called, a BLS base rate payment will be made (except for air, as noted in the comment and response below). No payment for mileage will be made.
- If the beneficiary is pronounced dead by an individual who is authorized by the State to pronounce death during the transport of the ambulance, the same payment rules apply as if the beneficiary were alive.

Comment: Some commenters suggested that, in the case where a beneficiary dies while an air ambulance is enroute to the scene, we pay air ambulance at the air base rate, not the BLS ground rate.

Response: We agree with the commenters. We will not pay mileage because there is no transport, but we will pay the applicable air base rate.

c. Multiple Arrivals

We stated in the proposed rule that, when multiple units respond to a call for services, we would pay the entity that provides the transportation for the beneficiary. The transporting entity would bill for all services furnished, as stated in current policy. For example, if

BLS and ALS entities respond to a call and the BLS entity furnishes the transportation after an ALS assessment is furnished, the BLS entity would bill using the ALS1 rate. We would pay the BLS entity at the ALS1 rate. The BLS entity and the ALS entity would have to negotiate between themselves payment for the ALS assessment.

Comment: Some commenters stated that the discussion of multiple arrivals in the proposed rule is confusing. They state that, although the issue was not discussed by the Committee, our discussion appears to be inconsistent with the industry's understanding that the ALS level of service may be billed only if an ALS supplier/provider is involved in the actual transportation.

Response: According to the definition of "ALS assessment" that we are promulgating in this final rule, an assessment may result in the determination that no ALS level service is required and, in that instance, an ALS1–Emergency level payment may be made to the transporting BLS ambulance supplier even if no ALS paramedic rides onboard.

Comment: One commenter stated that when two ALS ambulances respond, the ambulance fee schedule payment should be divided between them according to the services each provided.

Response: We have always construed the Medicare law as permitting payment for services only to the entity that provides the services, in this case, ambulance transport. Any suppliers that furnish services other than the transport must look to the transporting supplier for payment for other services. As described above, there is a limited provision of the law for paramedic intercept services under which the Congress permitted payment to be made directly to the entity furnishing the intercept service, but only under special circumstances provided in the regulations in § 410.40(c). However, a provider (for example, a hospital or skilled nursing facility) may furnish ambulance services under arrangements in accordance with section 1861(w) of the Act. In this case, the provider may bill for the ambulance service, even if another supplier furnished the transport, if the service is furnished pursuant to an arrangement between the two entities in accordance with the law.

d. BLS Services in an ALS Vehicle

The proposed rule stated that effective with implementation of the fee schedule, claims would be paid at the BLS level where an ALS vehicle is used but no ALS level of service is furnished. Claims would be filed using the appropriate BLS code. Like the other rules describing levels of service, these rules would be applicable on the effective date of this rule; there would be no transitional period for the rule.

Comment: Several commenters stated that our decision to pay at the BLS rate for the use of an ALS vehicle when no ALS service is furnished has the effect of not recognizing all-ALS mandates by local authorities (situations where the local government mandates that all ambulances within its jurisdiction be equipped to provide an ALS level of service). The commenters stated that this policy, which will result in an immediate budget savings for Medicare of approximately $70 million in 2002, should be phased in on the same schedule as the other regulatory changes. The commenters believe that we should apply the transition provisions in the negotiated rule to all payment changes, including those stemming from our decision to pay BLS rates when BLS services are provided using an ALS vehicle. Because we did not propose to phase in this policy (that is, we are not continuing to pay at the ALS level under the old portion of the transition payment), the commenters believe that many emergency medical systems will be threatened and Medicare beneficiaries will be at risk of not having access to emergency and other medical transportation services.

Response: While we continue to believe that BLS services should be paid at the BLS rate, even when an ALS vehicle is used, we agree with the comment to phase in the implementation of this policy. Therefore, when an ALS vehicle is used to furnish non-emergency BLS services only, the "old" portion of the blended rate will be at the "old" ALS non-emergency payment level and the "new" portion of the blended rate will be at the BLS fee schedule amount.

In addition, we are revising the definition of an ALS assessment needed to qualify for an ALS1-Emergency level of payment from the proposed definition. An emergency ambulance trip may be paid as an ALS1-Emergency even when the only ALS service furnished is an ALS assessment. This revision in the final rule will increase the trips paid at the ALS1-Emergency level, rather than at the BLS-Emergency level. Where the only ALS service furnished is an ALS assessment for an emergency, the "old" portion of the blended rate will be at the ALS emergency rate. We have also increased the amount of spending upon which the CF is based by the amount of savings that had been attributed to this policy.

III. Methodology for Determining the Conversion Factor

As discussed in the September 12, 2000 proposed rule (65 FR 55078), our approach to determining the conversion factor (CF) was:

(1) To use the most recent complete year of ambulance claims;

(2) To translate those claims into the format that would have been used under the fee schedule; and

(3) To calculate the CF, that, when applied to the RVUs for each level of service, results in the same total program payment for those claims, less $67 million that would have been saved if the fee schedule legislation had not been passed. (Under the final rule, as discussed in section III.D, we have decided not to subtract this amount in calculation of the CF.)

We would then inflate this CF in accordance with the inflation factor prescribed in the statute. (See section 1834(l)(3) of the Act, as amended by section 423 of BIPA.) We used 1998 as the base year because this was the most recent complete year for which claims data were available. For claims processed by carriers (that is, claims from independent ambulance suppliers), we used allowed charge data. For claims processed by fiscal intermediaries (FIs) for provider-based ambulance services, we used the submitted charges on the Medicare claims multiplied by the cost-to-charge ratio applicable to the ambulance costs for each provider.

We modified the claims data in several ways to calculate the proposed fee schedule and its impact. First, we separated all claims into two groups:

- Carrier-processed claims for ambulance services (8 million in 1998).
- FI processed claims for ambulance services (900,000 in 1998).

A. Carrier-Processed Claims

We had to adjust some of the 1998 claims for purposes of the proposed ambulance fee schedule calculation. Some of the claims did not report mileage and, because mileage will be required for each ambulance service under the fee schedule, an adjustment had to be made for the missing miles (see above). In other cases, the billing codes under the old system did not translate directly into services that would be paid under the proposed fee schedule. Below is a more detailed explanation of the adjustments that were made to the 1998 base year data in order to accommodate missing data.

1. Mileage

Approximately 1.1 million claims for ground ambulance services did not

show any mileage. The proposed fee schedule for ambulance services will provide a payment for the trip and a payment per statute mile for the loaded mileage traveled. Therefore, in calculating the proposed CF, we added mileage to those claims that did not report mileage. We did so by assigning the mode value (that is, the number of miles billed most often) per trip in urban areas (1.0 miles) and the mode value or mileage per trip in rural areas (1.0 miles).

Current billing instructions provide that only one ambulance trip may be billed per line on a claim. Because billing rules prohibit more than one trip to be reported on a line, we assumed any number greater than one was an error. Therefore, we did not count multiple trips billed on the same line of a claim. This reduced the total trip count processed by carriers by approximately 1 percent. This reduction of about 1 percent in the number of trips resulted in an increase of about 1 percent in the average allowed charge per trip.

Comment: Some commenters stated that some billers do not bill for mileage and will continue not to bill mileage after the fee schedule is implemented. Commenters stated that in other cases a supplier's submitted charge for mileage is lower than the fee schedule rural mileage rate and asked that the Medicare carrier automatically increase the supplier's charge by 50 percent before comparing the submitted charge to the fee schedule rural mileage rate. (This comparison is made because the law requires that payment be based on the lower of the actual submitted charge or the fee schedule amount.) Also, commenters stated that some billers have a lower charge for mileage that would offset their higher charge for the ambulance base rate service, but that this will not be considered when we process the claim for the base rate for purposes of the fee schedule.

Response: In the process of setting the conversion factor (CF), we found over one million claims that should have reported mileage but did not. As stated above, we assigned a value of 1 mile to each of these claims. This was the mode value of mileage for both urban and rural ambulance claims. The average value was 7 miles for urban and 17 miles for rural claims. Assuming 1 mile each for claims without mileage results in a higher CF than would have resulted if we used the average number of miles. We will monitor claims data after the fee schedule is initially implemented and recalibrate the CF to reflect actual, as opposed to projected, billing practices.

With respect to comments that we take into account suppliers that have high service charges but low mileage charges, we do not believe that this result is necessary or practical. Section 1833(a)(1)(R) of the Act states that CMS pays the lower of "the actual charge for the services" or fee schedule. While some commenters argued that we should be comparing total charges (that is, base rate plus mileage) rather than looking at the service and mileage separately, we believe comparing the components of the charge is equally consistent with the law. Moreover, the entire Medicare claims processing system is set up to process claims on an individual line-item basis. To change the claims processing system would jeopardize timely implementation of the fee schedule.

Comment: Many commenters suggested that the urban/rural designation for round trips should be based on the original point of pick-up, rather than from each point of pick-up.

Response: Each trip consisting of a point of pick-up and a destination is considered to be a trip on its own and must be billed, processed and paid individually.

Comment: One commenter presented this hypothetical: beneficiary becomes ill on a cruise near Alaska. Beneficiary is airlifted. The nearest facility cannot adequately care for the beneficiary. The nearest facility that can adequately attend to the beneficiary is in Anchorage, Alaska. The beneficiary lives in the continental United States. The beneficiary requests to be sent to Seattle, Washington. Can this be done?

Response: The program covers mileage only to the nearest facility equipped to treat the beneficiary. Any additional mileage is not covered by Medicare. However, the beneficiary may arrange with the ambulance supplier to pay the difference.

2. Billing Codes

We determined that the billing codes that represent items and services included under the ambulance fee schedule are all billing codes submitted by ambulance suppliers in the range of Health Care Common Procedure Coding System (HCPCS) A0030 through A0999 (excluding HCPCS code A0888, which is not covered by Medicare) and Common Procedural Terminology–Fourth Edition (CPT–4) [1] codes 93005 and 93041. HCPCS billing codes A0030 through A0999 represent ambulance services, supplies, and equipment that are covered by the ambulance fee schedule, and CPT codes 93005 and 93041 represent electrocardiogram (EKG) services that may be billed by ambulance suppliers. In addition, we incorporated all HCPCS billing codes in the range of A4000 through Z9999; these services could have been paid by a carrier to an ambulance supplier only if they represented items and services covered under the Medicare ambulance benefit. We excluded all other CPT billing codes in the range of 00001 through 99999 (except the two EKG codes listed above) because they represent services not covered by the ambulance fee schedule.

Next, we adjusted all billing codes that represented an ALS vehicle when no ALS service was furnished. We removed the actual allowed charges on these claims and replaced them with the charges that would have been allowed by the carrier for the corresponding BLS level of service (that is, emergency for emergency and nonemergency for nonemergency).

Comment: Several commenters stated that our decision to pay at the BLS rate for the use of an ALS vehicle when no ALS service is furnished has the effect of not recognizing all-ALS mandates by local authorities (situations where the local government mandates that all ambulances within its jurisdiction be equipped to provide an ALS level of service). The commenters stated that this reduction in the amount of spending used to set the CF was inappropriate.

Response: While we continue to believe that BLS services should be paid at the BLS rate, even when an ALS vehicle is used, we have decided to increase the amount of spending upon which the CF is based by the amount of savings that had been attributed to this policy.

3. Crosswalking the Old Billing Codes to the New Billing Codes

We converted the old billing codes in the base year data to the new billing codes as they will be under the final fee schedule. The old BLS codes convert directly to the final BLS codes. The old air ambulance codes (fixed wing and helicopter) convert to the final air ambulance codes. The old water ambulance code converts to the final BLS-Emergency code. The old mileage codes distinguished ALS miles from BLS miles; both of these old codes will convert to the single proposed mileage code. Codes used to report air mileage will convert to the final codes for fixed and rotary wing mileage, respectively. All air miles will be reported in statute miles. As mentioned earlier, we

[1] CPT codes and descriptions only are copyright 2001 of the American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.

converted the codes for an ALS vehicle when no ALS services were furnished to the corresponding BLS codes. The conversion of the remaining old ALS codes (for example, when ALS services were furnished) to final ALS codes is less straightforward because there are more levels of ALS service under the final fee schedule than currently exist. All nonemergency ALS codes convert to the ALS1 (nonemergency) code. Based on advice from various members of the Committee, for purposes of calculating the CF, we proposed converting the old emergency ALS codes according to the following formulas:

- For claims on which both the origin and destination was a hospital: 33 percent will convert to specialty care transport (SCT), 5 percent to advanced life support, level two (ALS2), and the remainder to ALS1-Emergency.
- For all other claims: 8.3 percent will convert to ALS2, and the remainder to ALS1-Emergency.

Comment: Commenters stated that the projected volume of 8.3 percent of current ALS emergency claims that will be billed under the fee schedule at the ALS2 rate is too high. The commenters stated that the projection provided by the Committee was only 2.3 percent.

Response: This comment was in error. We have verified with the Committee that the 8.3 percent projection was correct.

4. Low Billers

A concern was raised about low billers of ambulance services. Low billers are suppliers who currently bill less than the maximum charge allowed by Medicare. There are several reasons low billers exist. For example, an entity may have a low charge because the cost of its operation is subsidized by local taxes (for example, a municipal ambulance company); the entity may use volunteers; its charge may be regulated by local ordinances, limited by an inflation-indexed charge that is part of the Medicare program's current reasonable charge policy, or restricted for other reasons.

In the proposed rule, we stated that we have neither a means to estimate the extent to which low billing will continue after the fee schedule is implemented and the inflation-indexed charge limit no longer applies, nor a means to estimate the extent to which volunteer and municipal ambulances will choose not to file Medicare claims at the fee schedule amounts to which they could be entitled. Therefore, given the uncertainty of suppliers' future behavior, we proposed not to attempt to adjust the CF based on assumptions that low billing will or will not continue. We also stated that we will monitor payment and billing data and recalculate the CF as appropriate.

Because the total ambulance service payment amount is based on the actual allowed charges from the base year (1998), the CF will reflect historical charges for some suppliers that may have been lower than the reasonable charges of other suppliers. At the same time, if low billers of ambulance services continue to charge less than the ambulance fee schedule amount, we will continue to pay the lower amount as the law requires. Therefore, some members of the ambulance industry have urged us to increase the fee schedule CF, anticipating that, otherwise, savings would result from billers who continue to charge less than they could, in this case, less than the fee schedule amount. We have estimated that in the base year 1998, if all low billers had billed the maximum charges allowed by Medicare, total allowed charges for ambulance services would have been approximately $150 million more than they were. Approximately half of this amount is attributable to charges that are 70 percent of the maximum allowed charges or greater. Assuming that billers whose current charge is 70 percent or more of the maximum will charge the full fee schedule amount and that one-half of the entities whose current charge is less than 70 percent of the maximum allowed charge may continue to bill at less than the fee schedule amount, approximately $39 million in the base year 1998 might continue to be attributed to low billing. Adjusted for inflation, this amount (annualized) is approximately $42 million in 2002.

Comment: We received many comments questioning our approach to low billers. In particular, commenters believe that we were calculating the CF in such a way that we would inappropriately achieve between $75 million and $150 million in savings by assuming all low billers would begin to bill at the full amount allowed under the fee schedule. Commenters stated that we were obligated to ensure that the implementation of the fee schedule was budget neutral.

Response: We believe some commenters misunderstood our reasoning when we referred to the fact that an approximately $150 million difference existed in 1998 between ambulance suppliers' actual charges and the maximum charges allowed by Medicare and that approximately half of this amount (about $77 million) is attributable to charges that are 70 percent of the maximum allowed charge or greater. For those suppliers already charging 70 percent or greater of the maximum charges allowed, our reasoning was that they are likely to increase their charges when the inflation-indexed charge limit no longer applies.

While we continue to believe that future billing behavior is unpredictable, we have decided to make an adjustment in the CF in response to this comment. We will increase the CF to account for approximately $39 million in the base year 1998 (one-half of the amount attributable to the difference by which charges are less than 70 percent of the maximum allowed by Medicare ($77 million)). In light of the lack of available data to project how many low billers will increase their charges, we have decided to assume that one-half of the remaining low billers (representing the billers whose charge is less than 70 percent of the maximum) may continue to bill at less than the fee schedule because we agree that some low billers may not increase their charges up to the fee schedule amount. We will review this issue as part of the annual review to determine whether a further adjustment is warranted. If the level of low charge billing is significantly different from the assumed level, we will adjust the CF and apply such an adjusted CF prospectively. We also note that, in other circumstances, we have made assumptions that resulted in a higher CF. For example, as discussed above, in the process of setting the CF, there were over one million claims that should have reported mileage but did not. We assigned a value of one mile to each of these claims. This has resulted in a higher CF than if we had assigned a higher mileage estimate to these claims.

B. FI Processed Claims

Because all FI processed claims contained mileage, we did not make any adjustment for mileage. However, we did have to determine the codes that represented items and services included under the ambulance fee schedule. In the case of claims filed by hospital-based ambulance providers, services furnished in the emergency room and other outpatient departments of the hospital are reported on the same claim that is used to report the ambulance service. Therefore, it is impossible to know from the claims data where any of the nonambulance services were furnished. Because most of these nonambulance services were of the kind that would likely have been furnished in the hospital's emergency room, we did not include the data on them in data for the proposed ambulance fee schedule. Rather, we determined that

the billing codes that will be covered by the ambulance fee schedule are all billing codes representing ambulance services submitted by hospitals (for example, in the range of HCPCS codes A0030 through A0999 (excluding HCPCS code A0888, which is not covered by Medicare)).

Codes that represented the use of an ALS vehicle, but when no ALS level of service was furnished, were converted to the corresponding BLS billing code. However, in this case, no adjustment was made for payment because the correct data were already available since payment for these claims would have been made on a cost basis corrected to the proper amount at cost settlement.

Comment: A few commenters stated that the regulations do not address the issue of bad debt for ambulance services. Medicare has traditionally paid for hospitals' bad debts for uncollected beneficiary deductibles and copayments. The commenters believe that Medicare should be responsible for payment of reasonable costs associated with bad debt for ambulance services as well.

Response: There is no provision under the fee schedule for payment of bad debts. The law requires that the program pay 80 percent of the lower of the fee schedule amount or the billed charge and that the beneficiary is liable for the Part B coinsurance and any unmet Part B deductible amounts. Furthermore, sharing in bad debts for providers and not for independent suppliers would result in greater program payments to providers than suppliers for furnishing the same service. We believe that doing so would be antithetical to payment under a fee schedule.

C. Air Ambulance

To establish a consistent system of RVUs that could be applied to ground and air ambulance services, we must know the cost per service in each setting. Unfortunately, these data do not exist. One member of the Committee presented data and stated that the data, when combined with an analysis by an economist, demonstrated that the total costs in 1998 for air ambulance services were between a minimum of approximately $134.8 million and a maximum of $168 million. The higher amount exceeded the billed charges for air ambulance services. Because definitive cost data do not exist, the Committee decided to compromise by setting a range of total air ambulance costs between $134.8 million and $158 million within which we would set an amount reflecting incurred costs.

We considered several approaches in an attempt to accurately estimate the appropriate amount for air ambulance services within the range prescribed by the Committee.

We considered using cost data from a ground ambulance services survey acquired by an independent source that was hired by a member of the Committee. We tried to compare the results of this survey to cost data from our estimate. Because the study was only a self-reporting survey and did not report audited costs, and because the results varied widely and were substantially different from our estimate, we could not establish an estimate based on the survey that fell within the range prescribed by the Committee.

We converted old billing codes to the proposed billing codes in the same way as discussed above for the carrier-processed claims. Using the billed charge adjusted by the provider's cost-to-charge ratio, we are able to estimate the provider's Medicare-allowable cost for all ambulance services. However, we are unable to estimate with any certainty the split of air ambulance services costs and ground ambulance services costs from the same provider because Medicare cost-apportioning rules do not require data to be furnished in such detail. Originally, we assumed that the same cost-to-charge ratio within a provider applies to both air and ground ambulance services charges. However, because this assumption may not be correct, and because it results in an amount below the range specified by the Committee, we did not pursue this methodology.

Next, we considered using the billed charges for ambulance services. Over 80 percent of ground ambulance services are furnished by independent (not provider-based) ambulance suppliers. However, the average adjusted charge (that is, the charge adjusted by the provider's cost-to-charge ratio) for ALS and BLS ground ambulance services, excluding mileage, furnished by provider-based ambulance services is more than 65 percent greater than the average charge for independent ambulance services suppliers ($342 vs. $206 per trip). Assuming the appropriate payment for ground ambulance services is the average allowed charge for the independent suppliers, the amount of money misallocated to provider-based ground ambulance services substantially exceeds the amount that would represent a total payment for air ambulance services at the maximum recommended by the Committee ($158 million). This large discrepancy between the payment rates for provider-based and independent supplier ground ambulance services, and the fact that suppliers are able to furnish services at the lower rate, led us to conclude that the program cost apportionment process caused too much of providers' ambulance costs to be allocated to provider-based ground ambulance services and not enough of these costs were allocated to provider-based air ambulance services. We believe that the appropriate payment for ground ambulance services is closer to the independent supplier charge. Consequently, we have chosen the maximum air ambulance total amount designated by the Committee, that is, $158 million.

Comment: A few commenters mentioned that the cap on per trip payment inflation imposed on providers by section 4531 of the BBA of 1997, which states that the Secretary shall not recognize the costs per trip in excess of costs recognized as reasonable for ambulance services provided on a per trip basis during the previous fiscal year increased for inflation, is currently applied as a combined cost per trip cap for both ground and air ambulance trips. This, they state, is inappropriate because the mix of air and ground trips may change from year to year. The commenter stated that there should be separate caps for ground and air ambulance trips.

Response: We have interpreted this provision of the law as requiring a single combined cost per trip inflation payment cap for providers, because the law refers to total "costs per trip." We do not believe that the law contemplates the construction suggested by commenters. We also note that this issue arises only during the transition period. Once the fee schedule is fully implemented, there will be no provider-specific cost per trip limit.

Comment: A few commenters wanted further clarification on the methodology used to set the air ambulance fee schedule rates. Some commenters stated that the air ambulance payment rates should not be increased to the point of the air ambulance recovering its cost when payments for the ground ambulance will be reduced further to an amount below its cost. Another commenter stated that it is not reasonable to set the air amount based on charges for ground services.

Response: We do not have cost data to specifically distinguish the cost for air or ground services. The Committee recommended a range of $134.8–$158 million, and we determined the appropriate amount within that range. Because we believe that we have

providers' total costs for all ambulance services, we chose to use a proxy for the approximate charge (average charge for independent suppliers) for ground and subtract that amount from the total provider ambulance cost to estimate an appropriate amount for the air cost portion.

Considering the large discrepancy between the payment rates for provider-based and independent supplier ground ambulance services, we believe that the appropriate payment for these ground ambulance services is closer to the independent supplier charge for the following reasons: (1) Over 80 percent of ground ambulance services are furnished by independent (not provider-based) suppliers, and (2) 95 percent of suppliers' claims are paid on an assigned basis (that is, suppliers accept the Medicare allowed charge as payment in full). Consequently, we have chosen the maximum air ambulance total amount recommended by the Committee, which is $158 million. Choosing an amount lower than $158 million would lead us to pay ground ambulance rates at closer to the hospital-based rate than the independent supplier rate, which we believe to be unwarranted.

Comment: Some commenters cited abrupt and erratic increases in gas prices as a reason for the cost of air ambulance exceeding the proposed fee schedule rates. The impact will especially be felt for those providers whose aircraft consume from 60 to 103 gallons per hour.

Response: We believe that if increases in the cost of fuel occur, they will be accounted for by the inflation update factor applied to the ambulance fee schedule. We have set the rates for air at the maximum recommended by the Committee.

D. Calculation of the CF

We determined the total number of ambulance trips and loaded miles and the total amount of charges allowed by Medicare for ambulance services in the base year of 1998. In estimating the total volume of services at the new levels described under the fee schedule, we coded those cases in which an ALS vehicle was used in a nonemergency transport, but no ALS services were furnished, as BLS nonemergency services. Where an ALS vehicle was used in an emergency transport, we coded the transport as ALS1 if no ALS services were furnished because we assumed that an ALS assessment would always be performed; under the fee schedule, the criteria for ALS1 includes such an assessment.

To calculate the CF for ground ambulance services, we used the following procedures:

- We multiplied the volume of services for each level of ground ambulance service by the respective RVUs recommended by the Committee (including application of the practice expense of the GPCI and of the rural mileage rate as described above).
- We summed those products to arrive at the total number of RVUs.
- We subtracted the total allowed amount for air ambulance services ($158 million as discussed above) from the total charges allowed by Medicare for ambulance services, which results in the total amount of charges allowed by Medicare for ground ambulance services.
- We subtracted the total amount of allowed charges for ground mileage from this total charge amount.
- We divided the remaining charge amount by the total number of RVUs for ground services and applied the cumulative ambulance inflation factor for the period 1998 through 2002, which results in a CF for ground ambulance trips of $170.54.

We made five (5) changes from the calculation of the CF described in the proposed rule (which was $157.52). First, at the time of the proposed rule, we failed to crosswalk the emergency cases in which an ALS vehicle was used, but no ALS service was furnished, to the category of ALS1-Emergency services under the fee schedule; instead, we counted them as BLS-Emergency services. Second, there was a miscalculation of the number of rural ambulance miles that are less than or equal to 17 in the 1998 base data. Third, in this final rule, we added approximately $42 million (the annualized amount for 2002) as an estimate of the amount of low billing that will occur under the fee schedule and, thus, the amount that will be available for other ground ambulance services. This is discussed further in section V.B. Fourth, we changed the inflation adjustment for 2001 to conform to the inflation adjustments contained in section 423 of BIPA. Fifth, we added back to the total amount used to calculate the CF the savings that would have accrued to the program had we implemented the policy proposed in June 1997 that would pay at the BLS rate for services furnished at the BLS level even though an ALS vehicle was used.

We followed a similar procedure to determine the fee schedule amount for air ambulance services. Because there are only two kinds of air ambulance—fixed wing and rotary wing—we did not calculate RVUs and a CF, but calculated the actual fee schedule amounts directly. We divided the total number of billed air ambulance services into the total amount of payment available for these services ($158 million). The amounts in the base year (1998) are $2,286.52 and $2,658.42 for fixed wing and rotary trips, respectively. These numbers would then also be adjusted by the cumulative inflation factor provided in section 1834(l) of the Act. (The inflation factor is discussed in more detail below.)

We will monitor payment data and evaluate whether our assumptions used to establish the original CF (for example, the ratio of the volume of BLS services to ALS services) are accurate. If the actual proportions among the different levels of service are different from the projected amounts, we will adjust the CF accordingly and apply this adjusted CF prospectively.

Comment: One commenter recommended a third air rate for air ambulance services furnished in remote, frontier areas such as Alaska. The commenter stated that the cost of furnishing these services is considerably higher than standard rural areas because of the sparse population and large distances that must be traveled.

Response: We are not making this change to the fee schedule. Consistent with the Committee Statement, there will be two air rates: fixed wing and rotary wing (helicopter). As explained under the section for rural modifiers, there will be a 50 percent add-on applied to the base rate and to all of the loaded mileage for air ambulance services in rural areas. Therefore, longer trips will be paid proportionately more than shorter trips.

Comment: Many commenters from various regions believe that the fee schedule rates are too low and that suppliers and providers will substantially lose profits. Some commenters suggested that, for various reasons, they should be exempt from the fee schedule and continue to be paid under the current system. For example, a commenter described the EMS system in New Jersey as unique and stated that placing New Jersey ambulance suppliers under the fee schedule would actually result in a higher cost to Medicare because it would ultimately force volunteer ambulance companies to close.

Response: Section 1834(l) of the Act requires that the Secretary establish a fee schedule for ambulance services through negotiated rulemaking. Although the statute does call for consideration of appropriate regional and operational differences in the

design of the fee schedule, it does not authorize exemptions or waivers for individual providers or suppliers or groups of those providers or suppliers. However, with the enactment of BIPA, the Congress created one limited exemption from the fee schedule—CAHs that do not have another ambulance supplier within a 35-mile drive.

The Congress required that the fee schedule be implemented in such a way that Medicare payments for ambulance services would not exceed what they would have been absent the new fee schedule. The fee schedule will increase payments for providers and suppliers with unusually low rates, and decrease payments for those who have historically received payments above the national average, while still accounting for geographic differences in costs and other factors. In anticipation of such shifts, the Congress provided for a phase-in period to allow ambulance providers time to adjust to the new payment rates.

IV. Implementation Methodology

Currently, payment of ambulance services follows one of two methodologies, depending on the type of ambulance biller. Claims from ambulance service suppliers are paid based on a reasonable charge methodology, whereas claims from providers are paid based on the provider's interim rate (which is a percentage based on the provider's historical cost-to-charge ratio multiplied by the submitted charge) and then cost-settled at the end of the provider's fiscal year.

In the September 12, 2000 proposed rule, we stated that the ambulance fee schedule would be phased in over a 4-year period. The transition was to begin on January 1, 2001 and the fee schedule was to be phased in on a CY basis. However, as explained above, we will implement the fee schedule beginning April 1, 2002. Therefore, for dates of service (DOS) beginning April 1, 2002, suppliers/providers would be paid based on 80 percent of the respective current payment allowance (as described in Program Memorandum AB–00–87) applicable to this time period plus 20 percent of the ambulance fee schedule amount. (See § 414.615 for additional information.) Based on comments received, we will phase-in implementation of the ambulance fee schedule under a 5-year transition, as follows:

	Former payment percentage	Fee schedule percentage
Year One (4/2002–12/2002)	80	20
Year Two (CY 2003)	60	40
Year Three (CY 2004)	40	60
Year Four (CY 2005)	20	80
Year Five (CY 2006)	0	100

Comment: Many commenters expressed concern over whether providers, suppliers, carriers, and CMS are fully prepared for the ambulance fee schedule implementation and whether all of the necessary steps to ensure successful implementation have been taken. Specifically, commenters believe there was insufficient time between the close of the comment period on November 13, 2000, and January 1, 2001, to:

- Educate intermediaries, carriers and all ambulance suppliers and beneficiaries in order to provide a smooth transition to the new system.
- Change our computer programs (and for suppliers to change theirs) and test these changes before placing them online.

The fee schedule creates new codes, new requirements (for example, zip code for point of pick-up), new levels of service, and a transition blending methodology. The commenters stated that neither suppliers nor beneficiaries will understand how they are to be paid. Several commenters requested that we delay the implementation from January 1, 2001, to a later date.

Response: Although the proposed rule was largely based on an agreement reached as part of a formal, negotiated rulemaking process with representatives of the ambulance industry and other interested parties, we received a large volume of comments. We did not have sufficient time to carefully consider all comments and publish a final rule in time to implement the fee schedule by January 1, 2001. Therefore, payment under the fee schedule structure (that is, a blend of fee schedule amounts and current payments) did not begin on that date. This has allowed suppliers additional time to adjust to the proposed payment methodology.

The proposed rule was published in the **Federal Register** on September 12, 2000 (65 FR 55078). Suppliers have also had access to the formal instructions we issued to contractors with respect to the systems changes necessary to implement the fee schedule. In addition, we held a training conference with intermediaries and carriers on November 16 and 17, 2000, on all issues related to the fee schedule. Contractors conducted training efforts directly with ambulance suppliers during December 2000. We will continue our training efforts as we implement the new billing codes.

Comment: One commenter suggested that we cancel implementation of the ambulance fee schedule.

Response: We are required by the Congress under section 1834(l) of the Act to implement a fee schedule for ambulance services.

Comment: Two commenters stated that information in the Medicare and You publication was insufficient regarding the ambulance fee schedule.

Response: The *Medicare and You* publication is a handbook that provides a general synopsis of all services in Medicare: the level of detail concerning payment policy and implementation of the ambulance fee schedule in that publication are aimed at the general reader and not necessarily ambulance suppliers. Payment policies for ambulance services are published in detail in the **Federal Register** and subsequently in the CFR.

Comment: A few commenters disagreed with the phase-in schedule for the implementation of the ambulance fee schedule, stating that the implementation period was too short and not "in an efficient and fair manner" as required by the statute. The commenters stated that the phase-in is on a 3-year basis rather than a 4-year basis, as stated in the proposed rule. A few commenters wanted immediate, 100 percent implementation of the ambulance fee schedule, while others suggested other timeframes for a phase-in. Some commenters suggested a slower transition for providers as opposed to suppliers. Also, a few commenters recommended that SCT service payments be fully and

immediately implemented separately from the rest of the fee schedule.

Response: We agree that suppliers and providers need additional time to adjust to the fee schedule. Therefore, we will change the phase-in schedule from the proposed 4 years to a 5-year transition, as shown above. Thus, the overall phase-in is reflected in a 5-year span, with year 5 being at 100 percent of the fee schedule.

Comment: A few commenters requested that phase-in of the fee schedule should be by fiscal year for hospitals rather than by calendar year.

Response: We have decided not to phase in the fee schedule for providers based on each provider's fiscal year. As described above in section III.C., in general, Medicare's payment per trip to providers is considerably higher than the payment per trip to suppliers. Allowing a phase-in schedule on the provider's fiscal year would provide an advantage for some providers over independent suppliers because the fee schedule would be implemented unevenly across ambulance entities.

Comment: One commenter asked whether the limitation on review (in section 1834(l)(5) of the Act) refers only to the rates established under the ambulance fee schedule.

Response: The limitation on review, by its own terms, prohibits both administrative and judicial review of the amounts established under the fee schedule, including all the "considerations" contained in section 1834(l)(2) of the Act, for example, the definitions for ambulance services and appropriate regional and operational differences. Thus, review of all these issues is precluded.

Revisions and Additions to HCPCS Codes

Claims will be processed using the billing codes created for the ambulance fee schedule and contained in the proposed rule. From these codes, the amount for the portion of the payment based on the current system (80 percent in CY 2002) will be derived using the HCPCS crosswalks as shown below.

We have already changed "old" HCPCS ambulance codes in order to implement the ambulance fee schedule, effective January 1, 2001. The HCPCS codes formerly used to report ambulance services could not be used effective January 1, 2001, except for those HCPCS codes under which a method 3 or method 4 biller may bill for supplies separately (since such billing may continue during the transition period) and those codes previously used to bill for mileage. These codes will be used until the fee schedule is fully implemented.

The following chart shows how the former codes crosswalk to the final new codes under the ambulance fee schedule. Additionally, the chart shows "old" HCPCS codes that will not have a corresponding code under the final ambulance fee schedule. The items and services represented by these codes will be bundled into the base rate services.

Codes Not Valid Under the New Fee Schedule (Codes Terminate Effective 01/01/06): A0382, A0384, A0392, A0396, A0398, A0420, A0422, A0424, A0999.

HCPCS Code Changes:

Current HCPCS Code	New HCPCS Code	Descriptions of final new codes
A0380, A0390	A0425	Ground mileage (per statute mile).
A0306, A0326, A0346, A0366	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (ALS1).
A0310, A0330, A0350, A0370	A0427	Ambulance service, advanced life support, emergency transport, level 1 (ALS1-Emergency).
A0300, A0304*, A0320, A0324*, A0340, A0344*, A0360, A0364*.	A0428	Ambulance service, basic life support, non-emergency transport (BLS).
A0050, A0302, A0308**, A0322, A0328**, A0342, A0348**, A0362, A0368**.	A0429	Ambulance service, basic life support, emergency transport (BLS-Emergency).
A0030	A0430	Ambulance service, conventional air services, transport, one way (fixed wing (FW)).
A0040	A0431	Ambulance service, conventional air services, transport, one way (rotary wing (RW)).
Q0186	A0432	Paramedic ALS intercept (PI), rural area, transport furnished by a volunteer ambulance company which is prohibited by State law from billing third party payers.
	A0433	Advanced life support, Level 2 (ALS2). The administration of at least three different medications and/or the provision of one or more of the following ALS procedures: Manual defibrillation/cardioversion, endotracheal intubation, central venous line, cardiac pacing, chest decompression, surgical airway, intraosseous line.
	A0435	Air mileage; fixed wing (per statute mile).
	A0436	Air mileage; rotary wing (per statute mile).
	A0434	Specialty Care Transport (SCT). In a critically injured or ill beneficiary, a level of interfacility service provided beyond the scope of the Paramedic. This service is necessary when a beneficiary's condition requires ongoing care that must be provided by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).
	Q3019	Ambulance service, Advanced Life Support (ALS) vehicle used, emergency transport, no ALS level service furnished.
	Q3020	Ambulance service, Advanced Life Support (ALS) vehicle used, non-emergency transport, no ALS level service furnished.

*A new code will be established to indicate during the transition period that where an ALS vehicle was used in a non-emergency situation to furnish only BLS services, the service will be ALS-nonemergency for the old portion of the blended payment and BLS for the Fee Schedule portion of the blended payment.

**A new code will be established to indicate during the transition period that where an ALS vehicle was used in an emergency response and furnished only BLS services, the service will be ALS-Emergency for the old portion of the blended payment and BLS-Emergency for the Fee Schedule portion of the blended payment.

Payment to new suppliers that have not billed Medicare in the past will be subject to the transition period rules. New suppliers will be assigned an allowed charge under the current reasonable charge rules (for new

suppliers, the allowed charge is set at the 50th percentile of all charges for the service) and will receive the same blended transition payments as other ambulance suppliers. In all cases, the transitional payment will be subject (as will the fully implemented fee schedule payment) to the Part B coinsurance and deductible requirements.

Currently, we pay the provider's claims based on the provider's interim rate (the provider's submitted charge multiplied by the provider's past year's cost-to-charge ratio). That interim rate is:

- Cost-settled at the end of the provider's fiscal year, and
- Limited by the statutory inflation factor, contained in section 4531 of the BBA, applied to the provider's allowed cost per ambulance trip from the previous year.

The fee schedule transition will begin on April 1, 2002 and the fee schedule will be phased in on a calendar year basis. Therefore, for providers that file cost reports on a basis other than a calendar year (January 1–December 31) cost-reporting period, for cost-reporting periods beginning after April 1, 2002, two different rates will be blended. Effective for services furnished during 2002, the proposed blended amount for provider claims will equal the sum of 80 percent of the current payment system amount and 20 percent of the ambulance fee schedule amount. Although some providers may receive substantially lower payments than at present, the Committee recommended this particular phase-in, and we believe that our implementing payment under the fee schedule at only 20 percent in the first year will give ambulance providers a period of time to adjust to the new payment amounts. For dates of service in CY 2003, the blended amount will equal the sum of 60 percent of the current payment system amount and 40 percent of the ambulance fee schedule amount. For dates of service in CY 2004, the blended amount will equal the sum of 40 percent of the current payment system amount and 60 percent of the ambulance fee schedule amount. For dates of service in CY 2005, the blended amount will equal the sum of 20 percent of the current payment system amount and 80 percent of the ambulance fee schedule amount. For dates of service in CY 2006 and beyond, the payment amount will equal the ambulance fee schedule amount. In all cases, the fee schedule portion of the blended rate equals the blending percentage multiplied by the lower of the fee schedule amount or the actual billed charges. The program's payment in all cases will be subject to the Part B coinsurance and deductible requirements.

To assure that providers receive the correct payment amount during the transition period, all submitted charges attributable to ambulance services furnished during a cost-reporting period will be aggregated and treated separately from the submitted charges attributable to all other services furnished in the hospital. Also, providers must maintain statistics necessary for the Provider Statistics and Reimbursement report to ensure that the ambulance fee schedule portion of the blended transition payment will not be cost-settled at cost settlement time.

New providers will not have a cost per trip from the prior year. Therefore, there will be no cost per trip inflation limit applied to new providers in their first year of furnishing ambulance services.

New suppliers will use the CY 2000 allowed charge assigned for new suppliers in accordance with standard program procedures as described above, adjusted for each year of the transition period by the ambulance inflation factor that we announce.

Section 1834(l) of the Act also requires that all payments made for ambulance services under the proposed fee schedule be made on an assignment-related basis. Pursuant to section 1842(b)(18)(A) and (B) of the Act, incorporated by reference in section 1834(l)(6) of the Act, ambulance suppliers will have to accept the Medicare allowed charge as payment in full and not bill or collect from the beneficiary any amount other than the unmet Part B deductible and Part B coinsurance amounts. Violations of this requirement may subject suppliers to sanctions. The law provides that mandatory assignment applies to all services "for which payment is made under" section 1834(l) of the Act; therefore, there will be no transitional period for mandatory assignment of claims. Nor is there any transition to the mechanisms and definitions required by the law. Thus, for instance, the level of services definitions (for example, that claims will be paid for the fee schedule portion of the blended payment at the BLS level if an ALS vehicle was used but no ALS level of service was furnished) will not be subject to transition.

Comment: One commenter stated that we should share the new HCPCS codes with other payers in the interest of consistency among all payers.

Response: HCPCS codes, when established, are routinely shared with all payers.

Comment: A few commenters asked about HCPCS code A0888 (noncovered ambulance mileage) and whether it is being included in the crosswalk of old codes to new ones or is being terminated when the fee schedule is implemented.

Response: HCPCS code A0888 is the code for noncovered ambulance mileage (for example, mileage traveled beyond the closest appropriate facility). This code has not been deleted and may continue to be used as it was previously.

Comment: Some commenters suggested that we maintain current HCPCS codes for ambulance services for use by other payers.

Response: The new codes have been established in accordance with standard procedures that include approval by a national coding committee with representatives from private payers. As a result, HCPCS codes in effect prior to January 1, 2001, for ambulance services have been terminated and replaced by new codes.

Comment: Some commenters asked how payment would be made for new services that did not exist prior to the establishment of the new HCPCS codes (implemented January 1, 2001).

Response: We may determine that a new level of service is necessary to accommodate new expensive technologies. However, the Congress provided only for an inflation factor each year to update the aggregate amount paid under the fee schedule. There is no other provision for increasing the aggregate amount paid for ambulance services in successive years. Therefore, if a new code representing a new level of service is created, the CF would have to be recalculated to preserve this statutory payment limit.

Comment: A few commenters believe that, during the phase-in, suppliers should be allowed to bill for waiting time and an extra attendant.

Response: The phase-in builds upon suppliers' current payments as well as on the fee schedule. Therefore, to the extent that suppliers are currently allowed by their carrier to bill under the reasonable charge system for waiting time and an extra attendant, they may continue to bill in that way during the phase-in only.

Fee Schedule Amounts and Examples of Payment

The table below represents the fee schedule amounts for 2002 under this rule. Note that actual payment rates for 2002 will be a blend of the fee schedule amount and the payment allowances applicable for 2002.

TABLE 1.—2002 FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES

Service level	RVUs	CF	Unadjusted base rate (UBR)+	Amount adjusted by GPCI (70% of UBR)	Amount not adjusted (30% of UBR)	Loaded mileage	Rural ground mileage (miles 1–17)	Rural ground mileage (miles 18–50)*
BLS	1.00	170.54	$170.54	$121.65	$52.14	$5.47	$8.21	$6.84
BLS-Emergency	1.60	170.54	272.86	191.00	81.86	5.47	8.21	6.84
ALS1	1.20	170.54	204.65	143.26	61.40	5.47	8.21	6.84
ALS1-Emergency	1.90	170.54	324.03	226.82	97.21	5.47	8.21	6.84
ALS2	2.75	170.54	468.99	328.29	140.70	5.47	8.21	6.84
SCT	3.25	170.54	554.26	387.98	166.28	5.47	8.21	6.84
PI	1.75	170.54	298.45	208.91	89.54	(1) No Mileage Rate		

Service level	Unadjusted base rate (UBR)	Amount adjusted by GPCI (50% of UBR)	Amount not adjusted (50% of UBR)	Rural air base rate**	Loaded mileage	Rural air mileage***
FW	$2,314.51	$1,157.26	$1,157.26	$3,471.77	$6.57	$9.86
RW	2,690.96	1,345.48	1,345.48	4,036.44	17.51	26.27

*A 50 percent add-on to the mileage rate (that is, a rate of $8.21 per mile) for each of the first 17 miles identified as rural. A 25 percent add-on to the mileage rate (that is, a rate of $6.84 per mile) for miles 18 through 50 identified as rural. The regular mileage allowance applies for every mile over 50 miles.

**A 50 percent add-on to the air base rate is applied to air trips identified as rural.

***A 50 percent add-on to the air mileage rate is applied to every mile identified as rural.

The payment rate for rural air ambulance (rural air mileage rate and rural air base rate) is 50 percent more than the corresponding payment rate for urban services (that is, the sum of the base rate adjusted by the geographic adjustment factor and the mileage).

+This column illustrates the payment rates without adjustment by the GPCI. The conversion factor (CF) has been inflated for CY 2002.

Legend for Table 1

ALS1—Advanced Life Support, Level 1
ALS2—Advanced Life Support, Level 2
BLS—Basic Life Support
CF—Conversion Factor
FW—Fixed Wing
GPCI—Practice Expense Portion of the Geographic Practice Cost Index from the Physician Fee Schedule
PI—Paramedic ALS Intercept
RVUs—Relative Value Units
RW—Rotary Wing
SCT—Specialty Care Transport
UBR—Unadjusted Base Rate

Formulas—The amounts in the above chart are used in the following formulas to determine the fee schedule payments—

Ground

Ground-Urban: Payment Rate = [(RVU*(0.30+(0.70*GPCI))*CF]+[MGR*#MILES].

Ground-Rural: Payment Rate = [(RVU*(0.30+(0.70*GPCI))*CF]+[(((1+RG1)*MGR)*#MILES≤17)+(((1+RG2)*MGR)*#MILES18–50)+(MGR*#MILES>50)] (Sign before number 17 was erroneously published in the proposed rule.)

Air

Air-Urban: Payment Rate = [((UBR*0.50)+((UBR*0.50)*GPCI))]+[MAR*#MILES].

Air-Rural: Payment Rate = [(1.00+RA)*((UBR*0.50)*GPCI))]+[(1.00+RA)*(MAR*#MILES)].

Legend for Formulas

Symbol and Meaning

≤ = less than or equal to
> = greater than
* = multiply
CF = conversion factor (ground = $159.56; air = 1.0)
GPCI = practice expense portion of the geographic practice cost index from the physician fee schedule
MAR = mileage air rate (fixed wing rate = 6.49, helicopter rate = 17.30)
MGR = mileage ground rate (5.40)
#MILES = number of miles the beneficiary was transported
#MILES<17 = number of miles the beneficiary was transported less than or equal to 17
#MILES18–50 = number of miles beneficiary was transported between 18 and 50
#MILES>50 = number of miles the beneficiary was transported greater than 50
RA = rural air adjustment factor (0.50 on entire claim)
Rate = maximum allowed rate from ambulance fee schedule
RG1 = rural ground adjustment factor amount: first 17 miles (0.50 on first 17 miles)
RG2 = rural ground adjustment factor amount: miles 18 through 50 (0.25 on miles 18 through 50)
RVUs = relative value units (from chart)
UBR = the payment rates without adjustment by the GPCI (unadjusted base rate)

Notes: The GPCI is determined by the address (zip code) of the point of pickup.

Examples Demonstrating Use of Fee Schedule Amounts

The examples in the table and in the discussion below demonstrate the use of the ambulance fee schedule amounts during the first year (2002). Examples 1 through 4 relate to independent supplier claims, and Example 5 relates to hospital-based supplier claims.

TABLE 2.—EXAMPLES DEMONSTRATING USE OF FEE SCHEDULE AMOUNTS

Example	Reasonable charge IIC	Reasonable charge IIC × 80%	2002 fee schedule	2002 fee schedule × 20%	Total allowed charge
1	$315.62	$252.50	$343.66	$68.73	$321.23
2	292.44	233.95	425.62	85.12	319.07
3	1,982.26	1,585.81	2,987.23	597.45	2,183.26
4	1,564.80	1,251.84	6,250.83	1,250.17	2,502.01

TABLE 2.—EXAMPLES DEMONSTRATING USE OF FEE SCHEDULE AMOUNTS—Continued

Example	Reasonable charge IIC	Reasonable charge IIC × 80%	2002 fee schedule	2002 fee schedule × 20%	Total allowed charge
			(Erroneously given in proposed rule in Example 4 as: $4,599.69	$919.94	$2,171.78)

Example 1: Ground Ambulance, Urban (Independent Supplier)

A Medicare beneficiary residing in Baltimore, Maryland, was transported via ground ambulance from his or her home to the nearest appropriate hospital 2 miles away. An emergency response was required, and ALS services, including an ALS assessment, were furnished. Therefore, the level of service is ALS1-Emergency.

Assuming that the beneficiary was placed on board the ambulance in Baltimore, it will be an urban trip. Therefore, no rural payment rate will apply. In Baltimore, the GPCI = 1.038. The fee schedule amount will be calculated as follows—

Payment Rate = [(RVU*(0.30 + (0.70*GPCI))) *CF] + [MGR*#MILES]
Payment Rate = [(1.90*(0.30 + (0.70*1.038))) *170.54] + [5.47*2.00]
Payment Rate = [(1.90*(0.30 + 0.727)) *170.54] + [10.94]
Payment Rate = [(1.90*1.027)*170.54] + [10.94]
Payment Rate = [1.951*170.54] + [10.94]
Payment Rate = [332.724] + [10.94]
Payment Rate = 343.664
Payment Rate = $343.66 (subject to Part B deductible and coinsurance requirements)

Because 2002 will be the first year of a 5-year transition period, the ambulance fee schedule payment rate will be multiplied by 20 percent and added to 80 percent of the payment calculated by the current payment system. The payment rate for Year 2 (CY 2003) will be calculated by multiplying the ambulance fee schedule payment rate by 40 percent and adding the result to 60 percent of the current payment system amount. The payment rate for Year 3 (CY 2004) will be calculated by multiplying the ambulance fee schedule payment rate by 60 percent and adding the result to 40 percent of the current payment system amount. The payment rate for Year 4 (CY 2005) will be calculated by multiplying the ambulance fee schedule payment rate by 80 percent and adding the result to 20 percent of the current payment system amount. The payment for Year 5 (CY 2006) will be based solely on the ambulance fee schedule.

The applicable codes are A0427 and A0425. Assuming application of the inflation indexed charge (IIC) in 2002, the reasonable charge allowance for this service in Maryland is $315.62 ($303.00 for the base trip plus $6.31 × 2 miles).

Assuming that the Part B deductible has been met, the program will pay 80 percent, and the beneficiary's liability will be 20 percent, representing the Part B coinsurance amount, and the total allowed charge for this service during CY 2002 will be:

Medicare payment (80%)	Beneficiary liability (20%)
$256.98	$64.25

Example 2: Ground Ambulance, Rural (Independent Supplier)

A Medicare beneficiary residing in Cottle County, Texas was transported via ground ambulance from his or her home to the nearest appropriate facility located in Quanah, Texas. Cottle County, where the beneficiary was placed on board the ambulance, is a non-MSA and, therefore, is, for purposes of this fee schedule, rural. A rural mileage rate will apply. The total distance from the beneficiary's home to the facility is 36 miles. A BLS nonemergency assessment was performed. Under this rule, the level of service will be BLS (nonemergency).

For this part of Texas, the GPCI = 0.880. The proposed ambulance fee schedule amount will be calculated as follows—

36 mile trip = 17 miles at the 50% rural mileage increased rate plus 19 miles at the 25% rural mileage increased rate.
Payment Rate = [(RVU*(0.30 + (0.70*GPCI)))*CF] + [(((1+ RG1)*MGR)*#MILES≤17)+ (((1+RG2)*MGR)*# MILES18–50) + (MGR*#MILES>50)]
Payment Rate = [(1.00*(0.30 + (0.70*0.880))) *170.54] + [(((1.00 + 0.50)*5.47)*17.00)+ (((1.00 + 0.25)*5.47) *19.00) + (5.47*0.00)]
Payment Rate = [(1.00*(0.30 + 0.616)) *170.54] + [((1.50*5.47)*17.00)+ ((1.25*5.47)*19.00) + (0.00)]
Payment Rate = [(1.00*0.916)*170.54] + [(8.21*17.00) + (6.84*19.00) + (0.00)]
Payment Rate = [0.916*170.54] + [139.49 + 129.91 + 0.00]
Payment Rate = [156.215] + [269.40]
Payment Rate = 425.615
Payment Rate = $425.62 (subject to Part B deductible and coinsurance requirements)

The total allowed charge for this service during 2002 under our ambulance fee schedule is based on the following codes:

Old HCPCS Code(s) = A0300 and A0380
New HCPCS Code(s) = A0428 and A0425

Assuming application of the inflation indexed charge (IIC) in 2002, the reasonable charge rate for this service in Texas will be $292.44 ($152.76 for HCPCS A0300, $3.88 × 36 miles for A0380).

Assuming that the Part B deductible was met, the program will pay 80 percent, and the beneficiary's liability will be 20 percent, representing the Part B coinsurance amount and the total allowed charge for this service during 2002 will be:

Medicare payment (80%)	Beneficiary liability (20%)
$255.26	$63.81

Example 3: Air Ambulance, Urban (Independent Supplier)

A Medicare beneficiary was involved in an automobile accident along a busy interstate near Detroit, Michigan. A helicopter transported the beneficiary to the nearest appropriate facility located within the city limits of Detroit. The total distance from the accident to the facility was 14 miles. The level of service was rotary wing.

Assuming that the patient was placed on board the air ambulance within the Detroit MSA, and because this is not a Goldsmith county, the trip will be urban. Therefore, no rural payment rate will apply. In the Detroit metropolitan area, the GPCI = 1.038. The ambulance fee schedule amount will be calculated as follows—

Payment Rate =
[((UBR*0.50)+((UBR*0.50)
GPCI))]+[MAR#MILES]
Payment Rate =
[((2690.96*0.50)+((2690.96*0.50)
*1.038))]+[17.51*14.00]
Payment Rate =
[(1345.48+(1345.48*1.038)
)]+[245.14]
Payment Rate = [(1345.48+1396.608
)]+[245.14]
Payment Rate = [2742.088]+[245.14]
Payment Rate = 2987.228
Payment Rate = $2,987.23 (subject to Part B deductible and coinsurance requirements)

The total allowed charge for this service during 2002 is based on the following codes:
Old HCPCS Code = A0040
New HCPCS Code = A0431 and A0436

Assuming application of the inflation indexed charge (IIC) in 2002, the reasonable charge rate for this service in Michigan is $1,982.26.

Assuming that the Part B deductible has been met, the program will pay 80 percent, and the beneficiary's liability will be 20 percent, representing the Part B coinsurance amount; and the total allowed charge for this service during 2002 will be:

Medicare payment (80%)	Beneficiary liability (20%)
$1,746.61	$436.65

Example 4: Air Ambulance, Rural (Independent Supplier)

A Medicare beneficiary was transported via helicopter from a rural county in Arizona to the nearest appropriate facility. The total distance from point of pick-up to the facility was 86 miles. The level of service was rotary wing.

Because the point of pick-up was in a rural, non-MSA area, this transport will be a rural trip under this rule. Therefore, a rural payment rate will apply. In Arizona, the GPCI = 0.978. The ambulance fee schedule amount will be calculated as follows—

Payment Rate =
[(1.00+RA)*((UBR*0.50)+
((UBR*0.50)*GPCI))]+
[(1.00+RA)*(MAR*#MILES)]
Payment Rate =
[(1.00+0.50)*((2690.96*0.50)+
((2690.96*0.50)*0.978))]+
[(1.00+0.50)*(17.51*86.00)]
Payment Rate = [(1.50)*(1345.48+
(1345.48*0.978))]+[1.50*1505.86]
Payment Rate =
[(1.50)*(1345.48+1315.879
)]+[2258.79]
Payment Rate =
[1.50*2661.359]+[2258.79]
Payment Rate = [3992.039]+[2258.79]
Payment Rate = 6250.829
Payment Rate = $6,250.83 (subject to Part B deductible and coinsurance requirements)

The total allowed charge for this service during 2002 is based on the following codes:
Old HCPCS Code = A0040
New HCPCS Code = A0431 and A0436

Assuming application of the inflation indexed charge (IIC) for the example in question, in 2002 the reasonable charge rate for this service in Arizona will be $1,564.80.

Assuming that the Part B deductible has been met, the program will pay 80 percent and 20 percent will be the beneficiary's liability and the total allowed charge for this service during 2002 will be:

Medicare payment (80%)	Beneficiary liability (20%)
$2,001.61	$500.40

(These figures were erroneously given in the proposed rule as:

Medicare payment (80%)	Beneficiary liability (20%)
$1,737.42	$434.36)

Example 5: Ground Ambulance, Rural (Hospital-Based Supplier)

A Medicare beneficiary residing in a rural area in the state of Iowa was transported via ground ambulance from her home located in a rural area (non-MSA) to the nearest appropriate facility (Hospital A). Because the point of pick-up is in a rural area, under our final rule, a rural payment rate will apply. The total distance from the beneficiary's home to Hospital A is 14 miles. A BLS nonemergency transport was furnished. The level of service will be BLS (nonemergency).

For Iowa, the GPCI = 0.876. The ambulance fee schedule amount will be calculated as follows—

14 mile trip = 14 miles at the rural mileage rate plus 0 miles at the regular urban rate.

The HCPCS codes to be used under the fee schedule are A0428 and A0425.

Payment Rate = [(RVU*(0.30 +
(0.70*GPCI)))*CF] + [(((1 +
RG1)*MGR)* #MILES≤17)+(((1 +
RG2)*MGR)*# MILES18–50) +
(MGR*#MILES>50)]
Payment Rate = [(1.00*(0.30 +
(0.70*0.876))) *170.54] + [(((1.00 +
0.50) *5.47)*14.00) + (((1.00+0.25)
*5.47)*0.00) + (5.47*0.00)]
Payment Rate = [(1.00*(0.30 + 0.613))
*170.54] + [((1.50*5.47)*14.00) +
((1.25*5.47)*0.00) + (0.00)]
Payment Rate = [(1.00*0.913)*170.54] +
[(8.205*14.00) + (6.838 *0.00) +
(0.00)]
Payment Rate = [0.913*170.54] +
[114.87 + 0.00 + 0.00]
Payment Rate = [155.703] + [114.87]
Payment Rate = 270.573
Payment Rate = $270.57 (subject to Part B deductible and coinsurance requirements)

Since 2002 will be the first year of a 5-year transition period, the ambulance fee schedule payment rate will be multiplied by 20 percent. The portion of the total payment under the final fee schedule for 2002 is:

Payment Rate = Fee Schedule *
Transition Percentage
Payment Rate = 270.57*0.2
Payment Rate = 54.114
Payment Rate = $54.11

The remaining 80 percent of the payment rate is determined by the current payment system. For FIs, the current payment calculation is as follows.

Assume that Hospital A's charge (HCB) for a BLS-nonemergency service is $220.00, its charge for mileage (HCM) is $4.00 per mile, and its past year's cost-to-charge ratio (CCR) is 0.9.

Assuming that the beneficiary's Medicare Part B deductible has been met, the beneficiary's coinsurance liability for 2002 will be $55.10, calculated as follows:

Total Charge = HCB + (HCM*#MILES)
Total Charge = 220.00 + (4*14)
Total Charge = 220.00 + 56
Total Charge = $276.00 (Current system)

For 2002, the coinsurance is equal to 20 percent of:
Total rate = (0.80*Current System) +
(0.20*FS)
Total rate = (0.80*276.00) + (54.71)
Total rate = (220.80) + (54.71)
Total rate = $275.51
Coinsurance = 0.20*275.51 = $55.10

For 2002, the transition payment rate is equal to:

Transition payment rate = [0.80*current rate] + [0.20*FS]
Transition Payment Rate =
[0.80*((HCB)+(HCM*#MILES))
*CCR]+[0.20*FS]
Transition Payment Rate =
[0.80*((220.00) + (4*14))*0.9] +
[54.11]
Transition Payment Rate =
[0.80*((220.00)+(56)) *0.9] + [54.11]
Transition Payment Rate =
[0.80*(276.00)*0.9] + [54.11]
Transition Payment Rate = [198.72] +
[54.11]
Transition Payment Rate = $252.83

Assuming the part B deductible is met:

Medicare program payment = (transition payment rate) – (coinsurance)
Medicare program payment = 252.83 – 55.10
Medicare program payment = $197.73

V. Mechanisms To Control Expenditures for Ambulance Services

We do not anticipate that the number of ambulance services furnished will increase to offset the effects of lower payments per service, and the Committee did not suggest mechanisms to control expenditures. However, we will monitor payment data and evaluate whether our assumptions used to calculate the original CF (for example, the ratio of the volume of BLS services to ALS services or the number of low billers) are accurate. If the actual proportions of the various levels of service are different (higher or lower) than those projected, we will adjust the CF accordingly.

VI. Adjustments To Account for Inflation and Other Factors

In setting the CF for CY 2002, we are adjusting the base year data from 1998 for inflation. Section 4531 of the Balanced Budget Act of 1997, as amended by section 423 of BIPA, prescribes the inflation factor to be used in determining the payment allowances for ambulance services paid under the current Medicare payment system. The inflation factor is equal to the projected consumer price index for all urban consumers (U.S. city average) (CPI–U) minus 1 percentage point from March-to-March for claims paid under cost payment (providers) and from June-to-June for claims paid under the reasonable charge system (carrier processed claims). The base year for our data is 1998. The inflation factors as percents are:

	March-to-March (provider claims) (percentage)	June-to-June (carrier claims) (percentage)
1999/1998	0.9	1.1
2000/1999	2.4	2.0
2001/2000*	3.7	3.7
2002/2001	2.2	2.2
Compounded inflation factor* (DOS = 1/1/02–12/31/02)	9.50	9.29

*For date of service (DOS) during the 6-month period 1/1/01–6/30/01, the inflation factor was 2.7 percent, and for the 6-month period 7/1/01–12/31/01, the statutory inflation factor is 4.7 percent for an average of 3.7 percent for 2001.

In addition, the Committee acknowledged that the statutory provisions in section 1834(l)(3)(B) of the Act, regarding annual updates to the fee schedule, will be used to make adjustments to account for inflation. That section of the Act provides for an annual update to the ambulance fee schedule based on the percentage increase in the CPI–U for the 12-month period ending with June of the previous year. Section 4531 of the BBA provided that, for 2001 and 2002, the increase in the CPI–U would be reduced by 1.0 percentage point for each year. However, this section was amended by BIPA, which mandated that the inflation factor for the period July 1, 2001 through December 31, 2001 be 4.7 percent.

As we indicated in the proposed rule, we will monitor payment data and evaluate whether certain assumptions used to establish the original CF (for example, the ratio of the volume of BLS services to ALS services) are accurate. Where appropriate, we will adjust the CF accordingly.

In addition, we note that the inflation factor also applies to all mileage rates.

Comment: Some commenters stated that the inflation factor referred to in the proposed rule is not correct for the year 2001. They stated that it should be the change in the CPI–U over the one-year period ending with June 30, 2000, minus one percent. The commenters recommended that, since the statutory inflation factor for 2001 is the CPI–U increase for the 12-month period ending in June of the previous year, we should be using that factor for the 2001 update, rather than an estimate for the 12-month period ending in June of 2001.

Response: We agree. However, the Congress has since enacted a change in the ambulance inflation factor for part of 2001. Section 423 of BIPA provides that this factor be increased to 4.7 percent for the period July 1, 2001 through December 31, 2001.

Comment: Some commenters requested that we limit any adjustments to the CF to include only adjustments for the factors mentioned in the preamble. They state, for example, that the industry has no control over total volume of services and believe that we should not reduce the CF to offset increased charges resulting from any possible increase in total ambulance trips.

Response: We are not reducing the CF to offset increased program payments that result from an increase in the total volume of ambulance trips.

Comment: One commenter stated that operational costs in California (for example, personnel, insurance, fuel) are higher than other areas and the fee schedule should recognize these higher costs.

Response: Differences in operational costs due to location are reflected in the fee schedule through the GPCI. This index is derived from cost-of-living factors in the operation of a physician's office, such as personnel, insurance, electricity. The Committee believed that this index was the most appropriate of the indices available to use for the ambulance fee schedule.

VII. Medical Conditions Lists

When the Congress mandated that the ambulance fee schedule be developed through the negotiated rulemaking process, we deferred final action on our earlier proposal to base Medicare payment on the level of ambulance service required to treat the beneficiary's condition. The proposed ambulance coverage rule, published on June 17, 1997 (62 FR 32715), also included diagnostic codes based on the International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM) that would have described the nature of the beneficiary's medical condition. Use of the ICD–9–CM codes would have assisted ambulance suppliers in billing the medically necessary level of ambulance service.

While we did not propose a medical conditions list in the September 2000 proposed rule (65 FR 55078), and while a medical conditions list, or codes for such a list, were not an official part of the negotiated rulemaking process, some of the negotiated rulemaking participants and other medical professionals, including carrier medical directors, emergency room physicians, and the Emergency Nurses Association,

came together as an ad hoc workgroup to discuss this issue. Their aim was to develop a list of medical conditions, not diagnoses, that generally require ambulance services and to identify the appropriate level of care for these conditions. The identified condition(s) would describe the beneficiary's medical condition, as presented to the ambulance crew upon arrival on the scene. The workgroup's final report was submitted to the Committee as a recommendation for further consideration.

We published the list of medical conditions as Addendum A in the September 12, 2000 proposed rule (66 FR 55096). Suppliers and providers may submit these conditions on their Medicare claims. If they choose to do so, the condition must be reported in the "remarks" field on the claim. We will instruct Medicare contractors that they may not deny or reject claims solely because a supplier or provider has reported on the claim one of the conditions from the list of conditions. Also, the presence of a condition, in and of itself, does not establish the ambulance service as reasonable and necessary. Regardless of the presence of the condition on the claim, ambulance suppliers and providers must maintain and, upon request by the Medicare contractor, submit documentation sufficient to show that the service was reasonable and necessary. In other words, the presence of an identified condition on the claim will not make the claim payable if the beneficiary could have been safely transported by other means.

We noted in the proposed rule that we have solicited information from interested parties on the need for such a list and the development of codes used in association with such a list that would best support the processing of claims for ambulance services. We also noted that, while we were not requiring the use of the conditions list at that time, we intended to work with members of the industry and other affected parties to develop a more complete set of conditions as well as a coding system that could be used under the fee schedule. Any such coding system, after August 16, 2002, would have to be created consistent with the electronic claim standards developed pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104–91 (HIPAA), described in the **Federal Register** on August 17, 2000 (65 FR 50311).

Comment: The majority of the comments on this subject stated that the list of condition descriptions should be adopted as written. Some commenters recommended that we not implement the fee schedule until we can implement the medical conditions list. The commenters stated that a coding system, upon which the new fee schedule is based, should include a means for suppliers and providers to indicate on the claim the symptoms presented by the beneficiary to the ambulance crew at the time of arrival on the scene that justify the level of service they furnish.

Commenters also expressed concern that the medical conditions list is necessary for providers and suppliers to be able to report the appropriate level of service. One commenter noted that implementing the fee schedule without the medical conditions list will cause great hardship and confusion for ambulance suppliers and carriers regarding billing and claims processing.

Response: The ambulance fee schedule is based upon HCPCS codes that reflect the level of services provided to the beneficiary. We have set forth in this final rule the seven levels of service upon which payment for ground ambulance services will be based. Although the medical conditions may be used as a guide to indicate the appropriate level of ground ambulance service, they are not necessary in order to proceed with the implementation of the fee schedule. The ambulance fee schedule, which is simply a pricing mechanism, does not depend upon the use of a coding system denoting the list of conditions.

Under the current billing rules for ambulance services, Medicare carriers may request that suppliers document that the trip was medically necessary and that the appropriate level of service was provided. Currently, suppliers provide this documentation by using—(a) an explanation on the claims forms, (b) ICD–9–CM diagnosis codes, and/or (c) medical records.

As we stated above and in the proposed rule, we agree that a medical conditions list would help the ambulance supplier to identify the level of service at which a claim may be paid and would also aid Medicare contractors in their efforts to ensure that claims for ambulance services are paid appropriately. We understand the importance of implementing a uniform set of condition codes that all providers and suppliers can use. While this regulation does not contain such a set of codes, we pledge to work with the ambulance providers and suppliers, including hospitals, to develop a uniform set of codes over the next year. If a provider or supplier wishes to use the existing set of ICD–9–CM diagnosis codes, we will instruct our carriers and intermediaries to review that set of codes.

However, when the issue of a list of medical conditions was raised in the Committee, we advised the Committee that, while defining the levels of ambulance service was within the scope of the Committee, establishing the medical conditions that justify those levels of payment was not within that scope. Furthermore, we advised that recommendations about a coding system would have to be consistent with the regulations published pursuant to HIPAA. The HIPAA standards for electronic transactions final rule (65 FR 50312), which was published on August 17, 2000, established, among other things, Standards for the health care claims or equivalent encounter information transaction (45 CFR 162.1102). In general, the standards for that transaction require a specific format, the ASC X12N 837, and specify the use of certain medical data code sets when the transaction is transmitted electronically by an entity subject to the rule. Under HIPAA, the ASC X12N 837 and the specified code sets for the health care claims transactions do not currently support the use of condition descriptions lists. However, HIPAA provides for the maintenance and modification of adopted standards and for the adoption of new standards, as set forth in the regulations at § 162.910. Therefore, it is possible that, in the future, the health claims standards could be modified or expanded, or new standards created, in accordance with the procedures set forth in regulations, to accommodate condition descriptions lists.

Comment: Commenters did not agree on the appropriate coding system to be used for the conditions list. Some commenters believe that ICD–9 or ICD–10 codes should be associated with the condition descriptions, while others believe that we should not specify ICD–9 or ICD–10 codes as an appropriate system to determine medical conditions. Still others suggested that most conditions in the list could be mapped to existing ICD–9–CM codes, and the remaining conditions could be mapped to HCPCS codes. This approach would avoid the large expense to providers of implementing another coding system.

Response: As noted above, there are many factors to be considered before we make a final decision regarding the development of an ambulance-specific medical condition coding system. We also note that the example in the proposed rule mistakenly referenced ICD–10–CM codes and should have referenced ICD–9–CM codes.

Comment: One commenter stated that we should require Medicaid to use the new medical condition codes.

Response: States are not obligated to adopt Medicare guidelines for ambulance services.

IX. Provisions of the Final Rule

A. BIPA

BIPA provides the following changes to the ambulance fee schedule that have been incorporated into this rule.

• Critical Access Hospital (CAH)—The proposed rule would apply the ambulance fee schedule to all entities furnishing ambulance services to Medicare beneficiaries. Section 205 of BIPA provides that CAHs, or entities owned and operated by them, are paid for ambulance services based on reasonable cost, if there is no other ambulance provider or supplier within a 35-mile drive. As a result, these entities are exempt from the ambulance fee schedule described in this final rule. These entities are also exempt from the current cost-per-trip inflation cap applicable to providers. This cap, established by section 4531(a)(1) of the BBA, limits increases in the cost per trip of ambulance services from each year to the next by the consumer price index for all urban consumers, reduced by 1 percentage point. Implementation of section 205 of BIPA requires us to establish a process for a CAH to qualify for this exemption. Such a process was addressed in a separate final rule, "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education; Fiscal Year 2002 Rates, etc.; Final Rules," published August 1, 2001 (66 FR 39828). The payment policy component is addressed in this rule.

• Rural Ambulance Mileage—The proposed rule would pay rural mileage greater than 17 at the same rate as mileage within urban areas. Section 221 of BIPA provided that the payment rate for rural ambulance mileage greater than 17 miles and up to 50 miles be increased by not less than one-half of the additional payment per mile established for the first 17 miles of a rural ambulance trip. We are waiving proposed rulemaking for this provision because we believe this amount is the minimum that is required by the plain language of the law and is not discretionary. We believe that proposed rulemaking, which would be necessary to set the amount at a level higher than the minimum, is impracticable in this instance for timely implementation of the law and will therefore implement it as a final with comment. Therefore, we will accept public comments on this policy.

• Inflation Factor—The proposed rule would increase the per trip payments for services furnished in 2001 over the per trip payments for these services furnished in 2000 by an amount equal to the change in the CPI–U reduced by one percent. Section 423 of BIPA provided that the ambulance inflation factor for services furnished during the period July 1, 2001 through December 31, 2001 be equal to 4.7 percent. We have implemented this provision without proposed rulemaking because it was self-implementing and neither permitted nor required interpretation.

• Ground Ambulance Mileage—The proposed rule would pay for all ground ambulance mileage during a four-year transition period based on a blend of the current payment rate and the fee schedule rate. Section 423 of BIPA also provided that all mileage furnished by suppliers and paid by carriers would be paid at the full fee schedule amount without any phased-in blended payment, but only in those States in which, prior to the fee schedule, the carrier paid separately for all mileage outside the county from which the beneficiary was transported, but did not pay separately for any in-county ambulance mileage. This provision does not apply to providers. We are waiving proposed rulemaking for this provision because we believe this amount is the minimum that is required by the plain language of the law and is not discretionary. We believe that proposed rulemaking is impracticable in this instance for implementation of the law and will therefore implement it as a final with comment. Therefore, we will accept public comments on this policy.

B. Inflation

First, we corrected the inflation factor for 2001 to be equal to the percentage increase in the CPI–U minus one percent for the 12-month period ending in June of the previous year. This factor is applied to services furnished in the period January 1, 2002 through December 31, 2002.

Second, we clarify that the ambulance inflation factor applies to all mileage rates.

C. Physician Certification

We added a provision which states that the health care professional who may certify the necessity of an unscheduled non-emergency ambulance transport may be an employee of the attending physician. Previously, we had required this person to be an employee of the facility in which the beneficiary was receiving treatment. We also clarified that all of the Medicare regulatory requirements and State licensure requirements for these health care professionals apply.

We changed the requirement for certification for non-repetitive scheduled non-emergency ambulance transports. These transports no longer require certification in advance. They are now treated the same as unscheduled non-emergency ambulance transports for certification purposes. Certification in advance is now required only for repetitive scheduled non-emergency ambulance transports.

In addition, we added the words "provider or" to clarify that the same certification requirements apply to both providers and suppliers.

D. Bed-Confined

We clarified that bed-confinement is not necessarily sufficient justification for the medical necessity of a non-emergency ambulance transport. Other documentation may also be required. Other conditions in beneficiaries who are not bed-confined may also justify the medical necessity of a non-emergency transport by ambulance.

E. Future Adjustments to the Conversion Factor

We clarified the factors for which we will adjust the CF. We will not, for example, adjust the CF in response to an increase in the total number of ambulance transports over the number of transports in the previous year. We will adjust the CF if actual experience under the fee schedule is significantly different from the assumptions used to calculate the CF (for example, the relative volumes of the different levels of service or the extent of charges below the fee schedule (that is, "low billers")).

F. Adjustment for "Low Billing"

We have decided to assume that one-half of these "low billers" (that is, those billers whose charge is less than 70 percent of the maximum allowed by Medicare) would continue to charge an amount that is lower than the fee schedule amount. Therefore, we have increased the CF to account for approximately $42 million that we anticipated as the difference between the aggregate fee schedule amount and actual charges that will be significantly less than the fee schedule amount (that is, "low billing").

G. Ambulance Blueprint

We changed the criteria in the definitions of the services that constitute a BLS level and an ALS level of care from those in the national

Blueprint to the criteria contained in State and local laws.

H. ALS Assessment

We changed the definition of ALS assessment to conform to the definition in the Committee Statement and to clarify that an ALS assessment is recognized only in an emergency situation.

I. Emergency Response Definition

In the proposed rule, we stated that an emergency response means responding immediately to an emergency medical condition. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to a call. We deleted the phrase "emergency medical condition" from the definition of "emergency response." We clarified that the additional payment for emergency response is for the additional overhead cost of maintaining the resources required to respond immediately to a call and not for the cost of furnishing a certain level of service to the beneficiary. We also clarified that "emergency response" refers only to a BLS or ALS1 level of service.

J. Delayed Implementation

We will implement the fee schedule on April 1, 2002. The proposed rule had stated implementation would be January 1, 2001.

K. Drug Administration Which Supports an ALS2 Level of Services

We clarified the types of drugs that must be administered to the beneficiary in order for the ambulance transport during which the administration occurs to qualify for payment at the ALS2 level. We also clarified that three separate administrations of the same drug qualifies for the ALS2 level of care.

L. Multiple Patients

We changed the amount paid for transports in which there is more than one patient onboard the ambulance. In the proposed rule, we stated that a single transport fee would be allowed and distributed equally among the patients. In this final rule, we provide that payment will be made as follows. If two patients are transported simultaneously, for each Medicare beneficiary, we will allow 75 percent of the payment allowance for the base rate applicable to the level of care furnished to that beneficiary. If three or more patients are transported simultaneously, then the payment allowance for the Medicare beneficiary (or each of them) is equal to 60 percent of the service payment allowance applicable for the level of care furnished to the beneficiary. However, a single payment allowance for mileage would continue to be prorated by the number of patients onboard.

M. Changes to the Conversion Factor

Several changes have been made to the calculation of the CF from the methodology described in the proposed rule. The inflation factor used for calendar year 2001 was set at 3.7 percent. This is the annualized inflation factor provided by BIPA which has the effect of an inflation factor of 2.7 percent for the period January 1, 2001 through June 30, 2001, and 4.7 percent for the period July 1, 2001 through December 31, 2001 (as described above). Second, the CF was increased to reflect the assumption that some "low billers" (as described above) will continue to submit charges less than the fee schedule amount. Third, we corrected the number of rural miles equal to or less than 17 miles that were billed in calendar year 1998. Fourth, we revised our assumption with respect to the number of services that we believe will be billed at the ALS1-Emergency level because a supplier that provides an "ALS assessment" may receive payment for an ALS1-Emergency level of service. Fifth, we added back to the total amount used to calculate the CF the savings that would have accrued to the program had we implemented the policy proposed in June 1997 that would pay at the BLS rate for services furnished at the BLS level even though an ALS vehicle was used.

N. Deceased Beneficiary

We have clarified that, in the case of an air ambulance responding to a call for a beneficiary who was pronounced dead while the ambulance was enroute to the scene, payment will be made in the amount of the appropriate air base rate and not in the amount of a BLS ground rate. No payment will be made for mileage.

O. Medical Conditions List

We have specified that suppliers and providers may choose to submit a condition from the list of conditions and, if they do submit a condition, they must report that condition in the "remarks" field on the claim. Contractors may not deny or reject claims solely because a supplier or provider has reported a condition on the claim. Also, the presence of a condition, in and of itself, does not establish whether the services were reasonable and necessary. Regardless of the presence of the condition on the claim, ambulance suppliers and providers must maintain and, upon request by the Medicare contractor, submit documentation sufficient to show that the service was reasonable and necessary.

P. Transition Period

The transition period has been changed from the four-year transition in the proposed rule. The final rule provides a five-year transition with blended payments as follows:

	Former payment percentage	Fee schedule percentage
Year One (4/2002–12/2002)	80	20
Year Two (CY 2003)	60	40
Year Three (CY 2004)	40	60
Year Four (CY 2005)	20	80
Year Five (CY 2006)	0	100

Q. Payment for BLS Services Furnished by ALS Vehicle During Transition Period

In the proposed rule, we stated that during the transition period the "old" portion of the blended payment for BLS services furnished using an ALS vehicle would be the payment allowance for a BLS trip. In the final rule, we are phasing in this policy and the "old" portion of the blended payment will be at the allowance for an ALS trip.

X. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment

when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements.

Coverage of Ambulance Services (§ 410.40(d)(2))

This section is revised so that it no longer requires that an ambulance provider or supplier, before furnishing nonemergency, scheduled, nonrepetitive services to a beneficiary obtain a written order from the beneficiary's attending physician certifying that the services are medically necessary prior to the date the service is furnished.

Coverage of Ambulance Services (§ 410.40(d)(3)(iii))

This section states that if the ambulance provider or supplier is unable to obtain a signed physician certification statement from the beneficiary's attending physician, a signed certification statement must be obtained from either the physician assistant (PA), nurse practitioner (NP), clinical nurse specialist (CNS), registered nurse (RN), or discharge planner, who has personal knowledge of the beneficiary's condition at the time the ambulance transport is ordered or the service is furnished. This individual must be employed by the beneficiary's attending physician, or by the hospital or facility where the beneficiary is being treated and from which the beneficiary is transported. Medicare regulations for PAs, NPs, and CNSs apply and all applicable State licensure laws apply.

The burden associated with this requirement is the time and effort necessary for the required hospital or physician's employee to provide the certification. We estimate that there will be approximately 5,000 certifications on an annual basis at an estimated 5 minutes per certification. Therefore, the annual national burden associated with this requirement is 417 hours.

Coverage of Ambulance Services (§ 410.40(d)(3)(iv) & (v))

The following paragraphs also have information collection requirements:

Paragraph (d)(3)(iv): If the ambulance provider or supplier is unable to obtain the required certification within 21 calendar days following the date of the service, the ambulance provider or supplier must document its attempts to obtain the requested certification and may then submit the claim. Acceptable documentation includes a signed return receipt from the U.S. Postal Service or other similar service that evidences that the ambulance provider or supplier attempted to obtain the required signature from the beneficiary's attending physician or other individual named in paragraph (d)(3)(iii) above.

Paragraph (d)(3)(v): In all cases, the provider or supplier must keep appropriate documentation on file and, upon request, present it to the contractor. The presence of the signed certification statement or signed return receipt does not alone demonstrate that the ambulance transport was medically necessary. All other program criteria must be met in order for payment to be made.

The burden associated with these requirements is the time and effort necessary for the ambulance provider or supplier to document its attempts to obtain the requested certification statement and the time and effort necessary for the hospital or physician's employee to document the certification statement itself. We estimate that 5,000 providers or suppliers will be required to submit a receipt instead of certification for an average of 12 instances each on an annual basis, at an estimated 5 minutes per instance for a total annual national burden of 5,000 hours. We also estimate that there will be 5,000 certifications to be documented by the hospital or physician's employee at 5 minutes per instance for a total annual national burden of 417 hours.

Point of Pick-Up (§ 414.610(e))

This section states that the zip code of the point of pick-up must be reported on each claim for ambulance services so that the correct GAF and RAF may be applied, as appropriate.

In the proposed rule, we stated that the burden associated with this requirement is the time and effort necessary for the ambulance provider or supplier to note the required zip code for each claim of service. We estimated that, of the 9,000 (potential) providers or suppliers, 5,000 providers or suppliers will be required to provide the documentation, for an estimated 550,000 (5% of total claims volume of 11 million) instances on an annual basis. Per provider or supplier (5,000), we estimate 1 minute per instance to meet this requirement, for a burden of 2 hours per provider or supplier on an annual basis. Therefore, the annual national burden associated with this requirement is 10,000 hours.

Comment: A few commenters stated that the burden of reporting the zip code on the claim applies to 100 percent of total volume of claims and more than 2 hours per supplier per year.

Response: We agree with the commenters. The burden of reporting the zip code applies to all claims for ambulance services and to all providers and suppliers. We estimate that there will be approximately 10 million claims for ambulance services, from approximately 10,000 ambulance providers and suppliers, each of which will require the zip code to be entered. We estimate that entering the zip code requires about 15 seconds, giving a total annual burden of approximately 40,000 hours or an average of 4 hours per provider or supplier per year. We expect that this burden will diminish as providers and suppliers become familiar with the zip codes in their service area.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: Dawn Willinghan (Attn: CMS–1002–om N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

XI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (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). This final regulation will have no fiscal impact on the Medicare program; therefore, we have determined that this is not a major rule. However, we are providing a regulatory impact analysis because some entities will experience a decrease in payments while others will experience an increase in payments. This impact is less than the $70 million savings estimate for FY 2002 shown in the proposed rule because we are paying for BLS services furnished by ALS vehicles at the ALS rate for the reasonable charge portion of the blended rate during the transition period and because we have increased the amount of spending upon which the CF is based by the amount paid for ALS vehicles that furnished only a BLS level of service. In addition, our data indicate that payments (80 percent of which will be program expenditures and the remainder because of Medicare Part B coinsurance and deductible requirements) will be redistributed among entities that furnish ambulance services.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, most ambulance providers and most ambulance suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. In the aggregate, in 2002, rural entities, which include both rural hospitals and rural ambulance suppliers, will receive an increase in total revenue while urban entities will experience a decrease in total revenue as summarized in the chart, below. It is also true that some rural entities will be paid less than their current rate. While we do not have specific data on the number of small rural hospitals that furnish ambulance services, we recognize that the rural adjustment factor incorporated in this proposal may not completely offset the higher costs of low-volume suppliers. As stated earlier, we recognize that this rural adjustment is a temporary proxy to acknowledge the higher costs of certain low-volume isolated and essential suppliers. We will consider alternative methodologies that would more appropriately address payment to isolated, low-volume rural ambulance suppliers. In addition, critical access hospitals that do not have an ambulance supplier within a 35-mile drive will be paid for ambulance services based on cost.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The final rule will not have any unfunded mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The final rule will not impose compliance costs on the governments mentioned.

Although we view the anticipated results of this final regulation as beneficial to the Medicare program and to Medicare beneficiaries, we recognize that not all of the potential effects of this final rule can be anticipated.

The foregoing analysis concludes that this regulation may have a financial impact on a number of small entities. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA.

Comment: Many commenters noted that this is a major rule and that we should conduct a regulatory impact analysis under Executive Order 12866. They argue that the impact is more than $84.5 million because it should include: (1) The effects of our treatment in calculating the conversion factor of suppliers with low charges and those that do not bill for mileage; (2) redistribution effects; and (3) the effect of mandatory assignment of benefits. In addition, the rule does not discuss the impact on public safety of the ambulance suppliers who will experience a reduction in payments. The commenters noted that we should conduct a State-by-State impact assessment of the proposed rule to determine if there are regulatory alternatives that would have a less drastic effect on ambulance providers, many of whom are small businesses.

Response: As stated above, we have determined that this is not a major rule and that this final rule has no fiscal impact on the program. With respect to the mandatory assignment requirement, historically, ninety-five percent of ambulance services have been submitted to Medicare under assignment, and, while the fee schedule redistributes payments, we do not anticipate that the assignment requirement will be a major issue nationally. There may be areas of the country where balanced billing occurs more often than in other parts; however, the effect on total payments is unclear because payment in any of the areas may increase under the fee schedule. Also, as stated above, mandatory assignment of benefits is a requirement of the law and not subject to the discretion of the Secretary through this regulatory action. Also, we have included an amount in this final rule for suppliers of ambulance services who may choose not to bill the program at the full fee schedule amount.

B. Anticipated Effects

Implementation of the ambulance fee schedule will have several general effects. Section 1834(l)(3)(A) of the Act requires that the aggregate amount paid under the ambulance fee schedule not exceed the aggregate amount that would have been paid absent the fee schedule. One of the characteristics of the present payment system is that widely varying amounts are paid for the same type of service depending upon the location of the service. In effect, the ambulance fee schedule will lower payments in areas of high current levels of payment and raise payments in areas of low current levels of payment. Thus, a given area could have a large reduction in payment only because such an area had historically been paid at a rate higher than average for the type of service. Even with a reduction, such an area may continue to have payment rates under the fee schedule that are higher than the national average.

1. Effect on Ambulance Providers and Suppliers

One effect of the fee schedule will be that revenue will be redistributed from providers to ambulance suppliers because providers have been paid, on average, more for the same service furnished by a supplier.

2. Effects on Urban, Rural, and Air Ambulance Services

Payment could be redistributed from urban ambulance services to rural ambulance services for two reasons:

(1) Services furnished in urban areas have been paid more, on average, than the same services furnished in rural areas.

(2) The ambulance fee schedule will pay more for the same services furnished in a rural area than in an urban area because of the rural adjustment factor (RAF). Payment will also be redistributed from urban air ambulance services to rural air ambulance services because of the RAF for air services.

(3) Finally, there will be a redistribution of payment from ground ambulance services to air ambulance services. This effect is explained in greater detail in the discussion of the CF.

Currently, providers (for example, hospital-based ambulance services) are paid on average 66 percent more than independent suppliers for the same type of ambulance service. This is because providers are currently paid based on reasonable cost and suppliers are paid based on reasonable charges capped by the inflation indexed charge (IIC). The IIC has limited the growth of suppliers' payments over the years, whereas, until enactment of the BBA in 1997, there had not been a limit on the growth of providers' reimbursable cost for ambulance services. As a result, providers of ambulance services will experience a reduction in total revenue while independent ambulance suppliers will experience an increase in total revenue.

There are offsetting factors that affect payment in urban versus rural areas. While payment rates in rural areas will generally be lowered by the GPCI (because the GPCI is generally lower in rural areas than it is in urban areas), rural payment rates will increase because of the rural mileage add-on. The net result is that payments will be redistributed from providers and suppliers in urban areas to providers and suppliers in rural areas.

Furthermore, payments will be redistributed from providers and suppliers of ground ambulance services to providers and suppliers of air ambulance services.

The following chart summarizes these findings for 2002:

From	To	Revenue (million)
Providers	Suppliers	$14
Urban	Rural	17
Ground	Air	5

These amounts represent total revenue, that is, the 80 percent Medicare portion plus the 20 percent beneficiary coinsurance liability. The redistributive effects of this final rule represent a negligible fraction of the total revenue (both Medicare at $2.7 billion plus all other non-Medicare sources of revenue) for ambulance providers and suppliers. Therefore, we conclude and the Secretary certifies that this final rule does not have a significant impact on a substantial number of small entities.

3. Effect on the Medicare Program

We estimate that this final rule will have no fiscal impact on the Medicare program.

C. Alternatives Considered

While there were many alternatives considered during the course of the negotiated rulemaking process, the statute requires that total program expenditures not exceed what the payments would have been without the fee schedule. None of the alternatives considered changed total program expenditures. The alternatives varied in the manner in which the total amount of program expenditures might be distributed among the entities that furnish ambulance services to Medicare beneficiaries. For example, the Committee considered other geographical adjustment factors, other relative values for the levels of ambulance service, other definitions for the levels of ambulance service and other definitions for "rural entities," but it did not adopt them for various reasons. (A full description of these alternatives may be found at the Web site: *www.hcfa.gov/medicare/ambmain.htm.)*

D. Effect on Beneficiaries

The ambulance fee schedule will have a leveling effect on coinsurance liability. About 10 percent of the 37 million beneficiaries enrolled in Medicare Part B receive a Medicare benefit for ambulance services. While beneficiaries in those areas of historically higher than average payment rates will benefit from lower coinsurance liability, beneficiaries in areas of historically lower than average payment rates will experience an upward trend of coinsurance liability. While, on average, for all Medicare beneficiaries receiving a Medicare benefit for ambulance services there is no change in coinsurance liability, the average beneficiary coinsurance liability will increase by one percent for beneficiaries located in rural areas with the same decrease in coinsurance liability for beneficiaries in urban areas.

Beneficiaries will also benefit in those cases in which suppliers previously did not accept assignment and billed the beneficiary the difference between the Medicare program allowed amount and their actual charge, because under the fee schedule all suppliers must accept assignment.

E. Conclusion

We anticipate that the ambulance fee schedule amounts for entities that have historically received lower than average payment rates will be relatively higher and the fee schedule amounts for entities that have historically received higher than average payment rates will be relatively lower. Generally, this will mean higher rates in the future for rural transports, lower rates in the future for urban transports, and higher rates in the future for air ambulance services. We believe that the statutory requirement to establish mechanisms to control increases in expenditures for ambulance services under Part B of the Medicare program is met by continuance of the application of the inflation factors prescribed in the statute.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected in 42 CFR Part 410

Ambulances, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Medical and Other Health Services

2. Section 410.40 is amended by:
A. Revising paragraph (b).
B. Revising paragraph (d)(1).
C. Revising paragraph (d)(2).
D. Revising the paragraph (d)(3) heading and introductory text.
E. Revising paragraph (d)(3)(i).
F. Adding new paragraphs (d)(3)(iii), (d)(3)(iv), and (d)(3)(v).
The revisions and additions read as follows:

§ 410.40 Coverage of ambulance services.

* * * * *

(b) *Levels of service.* Medicare covers the following levels of ambulance service, which are defined in § 414.605 of this chapter:
(1) Basic life support (BLS) (emergency and nonemergency).
(2) Advanced life support, level 1 (ALS1) (emergency and nonemergency).
(3) Advanced life support, level 2 (ALS2).
(4) Paramedic ALS intercept (PI).
(5) Specialty care transport (SCT).
(6) Fixed wing transport (FW).
(7) Rotary wing transport (RW).

* * * * *

(d) *Medical necessity requirements—*
(1) *General rule.* Medicare covers ambulance services, including fixed wing and rotary wing ambulance services, only if they are furnished to a beneficiary whose medical condition is such that other means of transportation are contraindicated. The beneficiary's condition must require both the ambulance transportation itself and the level of service provided in order for the billed service to be considered medically necessary. Nonemergency transportation by ambulance is appropriate if either: the beneficiary is bed-confined, and it is documented that the beneficiary's condition is such that other methods of transportation are contraindicated; or, if his or her medical condition, regardless of bed confinement, is such that transportation by ambulance is medically required. Thus, bed confinement is not the sole criterion in determining the medical necessity of ambulance transportation. It is one factor that is considered in medical necessity determinations. For a beneficiary to be considered bed-confined, the following criteria must be met:
(i) The beneficiary is unable to get up from bed without assistance.
(ii) The beneficiary is unable to ambulate.
(iii) The beneficiary is unable to sit in a chair or wheelchair.
(2) *Special rule for nonemergency, scheduled, repetitive ambulance services.* Medicare covers medically necessary nonemergency, scheduled, repetitive ambulance services if the ambulance provider or supplier, before furnishing the service to the beneficiary, obtains a written order from the beneficiary's attending physician certifying that the medical necessity requirements of paragraph (d)(1) of this section are met. The physician's order must be dated no earlier than 60 days before the date the service is furnished.
(3) *Special rule for nonemergency ambulance services that are either unscheduled or that are scheduled on a nonrepetitive basis.* Medicare covers medically necessary nonemergency ambulance services that are either unscheduled or that are scheduled on a nonrepetitive basis under one of the following circumstances:
(i) For a resident of a facility who is under the care of a physician if the ambulance provider or supplier obtains a written order from the beneficiary's attending physician, within 48 hours after the transport, certifying that the medical necessity requirements of paragraph (d)(1) of this section are met.

* * * * *

(iii) If the ambulance provider or supplier is unable to obtain a signed physician certification statement from the beneficiary's attending physician, a signed certification statement must be obtained from either the physician assistant (PA), nurse practitioner (NP), clinical nurse specialist (CNS), registered nurse (RN), or discharge planner, who has personal knowledge of the beneficiary's condition at the time the ambulance transport is ordered or the service is furnished. This individual must be employed by the beneficiary's attending physician or by the hospital or facility where the beneficiary is being treated and from which the beneficiary is transported. Medicare regulations for PAs, NPs, and CNSs apply and all applicable State licensure laws apply; or,
(iv) If the ambulance provider or supplier is unable to obtain the required certification within 21 calendar days following the date of the service, the ambulance supplier must document its attempts to obtain the requested certification and may then submit the claim. Acceptable documentation includes a signed return receipt from the U.S. Postal Service or other similar service that evidences that the ambulance supplier attempted to obtain the required signature from the beneficiary's attending physician or other individual named in paragraph (d)(3)(iii) of this section.]
(v) In all cases, the provider or supplier must keep appropriate documentation on file and, upon request, present it to the contractor. The presence of the signed certification statement or signed return receipt does not alone demonstrate that the ambulance transport was medically necessary. All other program criteria must be met in order for payment to be made.

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

B. Part 414 is amended as set forth below:
1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395rr(b)(1)).

2. Section 414.1 is revised to read as follows:

§ 414.1 Basis and scope.

This part implements the following provisions of the Act:
1802—Rules for private contracts by Medicare beneficiaries.
1833—Rules for payment for most Part B services.
1834(a) and (h)—Amounts and frequency of payments for durable medical equipment and for prosthetic devices and orthotics and prosthetics.
1834(l)—Establishment of a fee schedule for ambulance services.
1834(m)—Rules for Medicare reimbursement for telehealth services.
1848—Fee schedule for physician services.
1881(b)—Rules for payment for services to ESRD beneficiaries.
1887—Payment of charges for physician services to patients in providers.
3. A new subpart H, consisting of §§ 414.601 through 414.625, is added to read as follows:

Subpart H—Fee Schedule for Ambulance Services

Sec.
414.601 Purpose.
414.605 Definitions.
414.610 Basis of payment.
414.615 Transition to the ambulance fee schedule.
414.620 Publication of the ambulance fee schedule.
414.625 Limitation on review.

Subpart H—Fee Schedule for Ambulance Services

§ 414.601 Purpose.

This subpart implements section 1834(l) of the Act by establishing a fee schedule for the payment of ambulance services. Section 1834(l) of the Act

requires that, except for services furnished by certain critical access hospitals (see § 413.70(b)(5) of this chapter), payment for all ambulance services, otherwise previously payable on a reasonable charge basis or retrospective reasonable cost basis, be made under a fee schedule.

§ 414.605 Definitions.

As used in this subpart, the following definitions apply to both land and water (hereafter collectively referred to as "ground") ambulance services and to air ambulance services unless otherwise specified:

Advanced life support (ALS) assessment is an assessment performed by an ALS crew as part of an emergency response that was necessary because the patient's reported condition at the time of dispatch was such that only an ALS crew was qualified to perform the assessment. An ALS assessment does not necessarily result in a determination that the patient requires an ALS level of service.

Advanced life support (ALS) intervention means a procedure that is, in accordance with State and local laws, beyond the scope of authority of an emergency medical technician-basic (EMT-Basic).

Advanced life support, level 1 (ALS1) means transportation by ground ambulance vehicle, medically necessary supplies and services and either an ALS assessment by ALS personnel or the provision of at least one ALS intervention.

Advanced life support, level 2 (ALS2) means either transportation by ground ambulance vehicle, medically necessary supplies and services, and the administration of at least three medications by intravenous push/bolus or by continuous infusion excluding crystalloid, hypotonic, isotonic, and hypertonic solutions (Dextrose, Normal Saline, Ringer's Lactate); or transportation, medically necessary supplies and services, and the provision of at least one of the following ALS procedures:

(1) Manual defibrillation/cardioversion.
(2) Endotracheal intubation.
(3) Central venous line.
(4) Cardiac pacing.
(5) Chest decompression.
(6) Surgical airway.
(7) Intraosseous line.

Advanced life support (ALS) personnel means an individual trained to the level of the emergency medical technician-intermediate (EMT–Intermediate) or paramedic. The EMT–Intermediate is defined as an individual who is qualified, in accordance with State and local laws, as an EMT–Basic and who is also qualified in accordance with State and local laws to perform essential advanced techniques and to administer a limited number of medications. The EMT–Paramedic is defined as possessing the qualifications of the EMT–Intermediate and also, in accordance with State and local laws, as having enhanced skills that include being able to administer additional interventions and medications.

Basic life support (BLS) means transportation by ground ambulance vehicle and medically necessary supplies and services, plus the provision of BLS ambulance services. The ambulance must be staffed by an individual who is qualified in accordance with State and local laws as an emergency medical technician-basic (EMT–Basic). These laws may vary from State to State. For example, only in some States is an EMT–Basic permitted to operate limited equipment on board the vehicle, assist more qualified personnel in performing assessments and interventions, and establish a peripheral intravenous (IV) line.

Conversion factor (CF) is the dollar amount established by CMS that is multiplied by relative value units to produce ground ambulance service base rates.

Emergency response means responding immediately at the BLS or ALS1 level of service to a 911 call or the equivalent in areas without a 911 call system. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call.

Fixed wing air ambulance (FW) means transportation by a fixed wing aircraft that is certified as a fixed wing air ambulance and such services and supplies as may be medically necessary.

Geographic adjustment factor (GAF) means the practice expense (PE) portion of the geographic practice cost index (GPCI) from the physician fee schedule as applied to a percentage of the base rate. For ground ambulance services, the PE portion of the GPCI is applied to 70 percent of the base rate for each level of service. For air ambulance services, the PE portion of the GPCI is applied to 50 percent of the applicable base rate.

Goldsmith modification means the recognition of rural areas within certain Standard Metropolitan Statistical Areas wherein a census tract is deemed to be rural when located within a large metropolitan county of at least 1,225 square miles, but is so isolated from the metropolitan core of that county by distance or physical features as to be more rural than urban in character.

Loaded mileage means the number of miles the Medicare beneficiary is transported in the ambulance vehicle.

Paramedic ALS intercept (PI) means EMT–Paramedic services furnished by an entity that does not furnish the ground ambulance transport, provided the services meet the requirements specified in § 410.40(c) of this chapter.

Point of pick-up means the location of the beneficiary at the time he or she is placed on board the ambulance.

Relative value units (RVUs) means a value assigned to a ground ambulance service.

Rotary wing air ambulance (RW) means transportation by a helicopter that is certified as an ambulance and such services and supplies as may be medically necessary.

Rural adjustment factor (RAF) means an adjustment applied to the base payment rate when the point of pick-up is located in a rural area.

Rural area means an area located outside a Metropolitan Statistical Area (MSA), or a New England County Metropolitan Area (NECMA), or an area within an MSA that is identified as rural by the Goldsmith modification.

Specialty care transport (SCT) means interfacility transportation of a critically injured or ill beneficiary by a ground ambulance vehicle, including medically necessary supplies and services, at a level of service beyond the scope of the EMT–Paramedic. SCT is necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area, for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training.

§ 414.610 Basis of payment.

(a) *Method of payment.* Medicare payment for ambulance services is based on the lesser of the actual charge or the applicable fee schedule amount. The fee schedule payment for ambulance services equals a base rate for the level of service plus payment for mileage and applicable adjustment factors. Except for services furnished by certain critical access hospitals or entities owned and operated by them, as described in § 413.70(b) of this chapter, all ambulance services are paid under the fee schedule specified in this subpart (regardless of the vehicle furnishing the service).

(b) *Mandatory assignment.* Effective with implementation of the ambulance fee schedule described in § 414.601 (that is, for services furnished on or after April 1, 2002), all payments made for ambulance services are made only on an assignment-related basis. Ambulance

suppliers must accept the Medicare allowed charge as payment in full and may not bill or collect from the beneficiary any amount other than the unmet Part B deductible and Part B coinsurance amounts. Violations of this requirement may subject the provider or supplier to sanctions, as provided by law (part 402 of this chapter).

(c) *Formula for computation of payment amounts.* The fee schedule payment amount for ambulance services is computed according to the following provisions:

(1) *Ground ambulance service levels.* The CF is multiplied by the applicable RVUs for each level of service to produce a service-level base rate. The service-level base rate is then adjusted by the GAF. Compare this amount to the actual charge. The lesser of the charge or the GAF adjusted base rate amount is added to the payment rate per mile, multiplied by the number of miles that the beneficiary was transported. When applicable, the appropriate RAF is applied to the ground mileage rate to determine the appropriate payment rates. The RVU scale for the ambulance fee schedule is as follows:

Service level	Relative value units (RVUs)
BLS	1.00
BLS–Emergency	1.60
ALS1	1.20
ALS1–Emergency	1.90
ALS2	2.75
SCT	3.25
PI	1.75

(2) *Air ambulance service levels.* The base payment rate for the applicable type of air ambulance service is adjusted by the GAF and, when applicable, by the appropriate RAF to determine the amount of payment. Air ambulance services have no CF or RVUs. This amount is compared to the actual charge. The lesser of the charge or the adjusted GAF rate amount is added to the payment rate per mile, multiplied by the number of miles that the beneficiary was transported. When applicable, the appropriate RAF is also applied to the air mileage rate.

(3) *Loaded mileage.* Payment is made for each loaded mile. Air mileage is based on loaded miles flown as expressed in statute miles. There are three mileage payment rates: a rate for FW services, a rate for RW services, and a rate for all levels of ground transportation.

(4) *Geographic adjustment factor (GAF).* For ground ambulance services, the PE portion of the GPCI from the physician fee schedule is applied to 70 percent of the base rate for ground ambulance services. For air ambulance services, the PE portion of the physician fee schedule GPCI is applied to 50 percent of the base rate for air ambulance services.

(5) *Rural adjustment factor (RAF).* For ground ambulance services where the point of pickup is in a rural area, the mileage rate is increased by 50 percent for each of the first 17 miles and by 25 percent for miles 18 through 50. The standard mileage rate applies to every mile over 50 miles. For air ambulance services where the point of pickup is in a rural area, the total payment is increased by 50 percent; that is, the rural adjustment factor applies to the sum of the base rate and the mileage rate.

(6) *Multiple patients.* The allowable amount per beneficiary for a single ambulance transport when more than one patient is transported simultaneously is based on the total number of patients (both Medicare and non-Medicare) on board. If two patients are transported simultaneously, then the payment allowance for the beneficiary (or for each of them if both patients are beneficiaries) is equal to 75 percent of the service payment allowance applicable for the level of care furnished to the beneficiary, plus 50 percent of the applicable mileage payment allowance. If three or more patients are transported simultaneously, the payment allowance for the beneficiary (or each of them) is equal to 60 percent of the service payment allowance applicable for the level of care furnished to the beneficiary, plus the applicable mileage payment allowance divided by the number of patients on board.

(d) *Payment.* Payment, in accordance with this subpart, represents payment in full (subject to applicable Medicare Part B deductible and coinsurance requirements as described in subpart G of part 409 of this chapter or in subpart I of part 410 of this chapter) for all services, supplies, and other costs for an ambulance service furnished to a Medicare beneficiary. No direct payment will be made under this subpart if billing for the ambulance service is required to be consolidated with billing for another benefit for which payment may be made under this chapter.

(e) *Point of pick-up.* The zip code of the point of pick-up must be reported on each claim for ambulance services so that the correct GAF and RAF may be applied, as appropriate.

(f) *Updates.* The CF, the air ambulance base rates, and the mileage rates are updated annually by an inflation factor established by law. The inflation factor is based on the consumer price index for all urban consumers (CPI–U) (U.S. city average) for the 12-month period ending with June of the previous year.

(g) *Adjustments.* The Secretary will annually review rates and will adjust the CF and air ambulance rates if actual experience under the fee schedule is significantly different from the assumptions used to determine the initial CF and air ambulance rates. The CF and air ambulance rates will not be adjusted solely because of changes in the total number of ambulance transports.

§ 414.615 Transition to the ambulance fee schedule.

The fee schedule for ambulance services will be phased in over 5 years beginning April 1, 2002. Subject to the first sentence in § 414.610(a), payment for services furnished during the transition period is made based on a combination of the fee schedule payment for ambulance services and the amount the program would have paid absent the fee schedule for ambulance services, as follows:

(a) *2002 Payment.* For services furnished in 2002, the payment for the service component, the mileage component and, if applicable, the supply component is based on 80 percent of the reasonable charge for independent suppliers or on 80 percent of reasonable cost for providers, plus 20 percent of the ambulance fee schedule amount for the service and mileage components. The reasonable charge or reasonable cost portion of payment in CY 2002 is equal to the supplier's reasonable charge allowance or provider's reasonable cost allowance for CY 2001, multiplied by the statutory inflation factor for ambulance services.

(b) *2003 Payment.* For services furnished in CY 2003, payment is based on 60 percent of the reasonable charge or reasonable cost, as applicable, plus 40 percent of the ambulance fee schedule amount. The reasonable charge and reasonable cost portion in CY 2003 is equal to the supplier's reasonable charge or provider's reasonable cost for CY 2002, multiplied by the statutory inflation factor for ambulance services.

(c) *2004 Payment.* For services furnished in CY 2004, payment is based on 40 percent of the reasonable charge or reasonable cost, as applicable, plus 60 percent of the ambulance fee schedule amount. The reasonable charge and reasonable cost portion in CY 2004 is equal to the supplier's reasonable charge or provider's reasonable cost for CY 2003, multiplied by the statutory inflation factor for ambulance services.

(d) *2005 Payment.* For services furnished in CY 2005, payment is based on 20 percent of the reasonable charge or reasonable cost, as applicable, plus 80 percent of the ambulance fee schedule amount. The reasonable charge and reasonable cost portion in CY 2005 is equal to the supplier's reasonable charge or provider's reasonable cost for CY 2004, multiplied by the statutory inflation factor for ambulance services.

(e) *2006 and Beyond Payment.* For services furnished in CY 2006 and thereafter, the payment is based solely on the ambulance fee schedule amount.

(f) *Updates.* The portion of the transition payment that is based on the existing payment methodology (that is, the non-fee-schedule portion) is updated annually for inflation by a factor equal to the percentage increase in the CPI–U (U.S. city average) for the 12-month period ending with June of the previous year. The CY 2002 inflation update factor used to update the 2001 payment amounts is applied to the annualized (average) payment amounts for CY 2001. For the period January 1, 2001 through June 30, 2001, the inflation update factor is 2.7 percent. For the period July 1, 2001 through December 31, 2001, the inflation update factor is 4.7 percent. The average for the year is 3.7 percent. Thus, the annualized (average) CY 2001 payment amounts used to derive the CY 2002 payment amounts are equivalent to the CY 2001 payment amounts that would have been determined had the inflation update factor for the entire CY 2001 been 3.7 percent. Both portions of the transition payment (that is, the portion that is based on reasonable charge or reasonable cost and the portion that is based on the ambulance fee schedule) are updated annually for inflation by the inflation factor described in § 414.610(f).

(g) *Exception.* There will be no blended payment allowance as described in paragraphs (a), (b), (c), and (d) of this section for ground mileage in those States where the Medicare carrier paid separately for all out-of-county ground ambulance mileage, but did not, before the implementation of the Medicare ambulance fee schedule, make a separate payment for any ground ambulance mileage within the county in which the beneficiary was transported. Payment for ground ambulance mileage in that State will be made based on the full ambulance fee schedule amount for ground mileage. This exception applies only to carrier-processed claims and only in those States in which the carrier paid separately for out-of-county ambulance mileage, but did not make separate payment for any in-county mileage throughout the entire State.

§ 414.620 Publication of the ambulance fee schedule.

Changes in payment rates resulting from incorporation of the annual inflation factor described in § 414.610(f) will be announced by notice in the **Federal Register** without opportunity for prior comment. CMS will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor.

§ 414.625 Limitation on review.

There will be no administrative or judicial review under section 1869 of the Act or otherwise of the amounts established under the fee schedule for ambulance services, including the following:

(a) Establishing mechanisms to control increases in expenditures for ambulance services.

(b) Establishing definitions for ambulance services that link payments to the type of services provided.

(c) Considering appropriate regional and operational differences.

(d) Considering adjustments to payment rates to account for inflation and other relevant factors.

(e) Phasing in the application of the payment rates under the fee schedule in an efficient and fair manner.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 19, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–4548 Filed 2–22–02; 12:00 pm]

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Federal Register

Wednesday,
February 27, 2002

Part V

Department of Housing and Urban Development

Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program (FHAP); Request for Comments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4688–N–01]

Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program (FHAP); Request for Comments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: Under HUD's regulations addressing the certification of State and local fair housing enforcement agencies under the Fair Housing Assistance Program, the Department is required to periodically inform the public of certified and interim certified agencies and identify those agencies where a denial of interim certification or withdrawal of certification has been issued or proposed and solicit comments from the public, prior to HUD granting certification to State or local fair housing enforcement agencies. This notice fulfills these requirements.

DATES: *Comments Due Date:* March 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding HUD granting certification to State or local fair housing enforcement agencies to the Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Lauretta A. Dixon, Director, FHIP/FHAP Support Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, at (202) 708–2215 (this is not a toll free number). Persons with speech or hearing impairments may contact the FHIP/FHAP Support Division by calling 1–800–290–1671, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the "800" numbers, these numbers are not toll-free.

SUPPLEMENTARY INFORMATION: Section 115.102 of HUD's regulations in 24 CFR Part 115 requires the Department to publish a notice soliciting public comment before granting certification to state or local fair housing enforcement agencies. The regulation also requires HUD to publish a list of agencies that have interim certification or certification, and a list of agencies to which a notice of denial of interim certification has been issued, or for which withdrawal of certification is being proposed.

(1) Prior to granting certification, HUD is soliciting public comment on the fair housing laws of the following agencies and the performance of the following agencies in enforcing their fair housing laws:

Austin Human Rights Commission (Texas)
Boston Fair Housing Commission (Massachusetts)
Cedar Rapids Civil Rights Commission (Iowa)
District of Columbia Office of Human Rights (District of Columbia)
Elkhart Human Relations Commission (Indiana)
Garland Office of Housing and Neighborhood Services (Texas)
Hillsborough County Board of County Commissioners (Florida)
Jacksonville Equal Opportunity Commission (Florida)
Mason City Human Rights Commission (Iowa)
Michigan Department of Civil Rights (Michigan)
New York State Division of Human Rights (New York)
North Dakota Department of Labor (North Dakota)
Palm Beach County Office of Human Rights (Florida)
Parma Law Department (Ohio)
Pittsburgh Human Relations Commission (Pennsylvania)
Reading Human Relations Commission (Pennsylvania)
Rockland County Commission on Human Rights (New York)
Tennessee Human Rights Commission (Tennessee)
Vermont Human Rights Commission (Vermont)
Waterloo Commission on Human Rights (Iowa)
York City Human Relations Commission (Pennsylvania)

(2) Withdrawal of certification was issued for the following jurisdiction because it repealed its fair housing ordinance:

Clearwater Human Relations Department (Florida)

There have been no denials of interim certification.

(3) The following is a list of agencies that have been granted interim certification and certification.

A. Agencies Granted Interim Certification

Austin Human Rights Commission (Texas)
Boston Fair Housing Commission (Massachusetts)
Cedar Rapids Civil Rights Commission (Iowa)
City of Bradenton (Florida)
Corpus Christi Department of Human Relations (Texas)
Davenport Civil Rights Commission (Iowa)
District of Columbia Office of Human Rights (District of Columbia)
Elkhart Human Relations Commission (Indiana)
Garland Office of Housing and Neighborhood Services (Texas)
Hillsborough County Board of County Commissioners (Florida)
Jacksonville Equal Opportunity Commission (Florida)
Lee County Office of Equal Opportunity (Florida)
Lincoln Commission on Human Rights (Nebraska)
Mason City Human Rights Commission (Iowa)
Michigan Department of Civil Rights (Michigan)
New York State Division of Human Rights (New York)
North Dakota Department of Labor (North Dakota)
Orange County Human Relations Commission (North Carolina)
Palm Beach County Office of Human Rights (Florida)
Parma Law Department (Ohio)
Pittsburgh Human Relations Commission (Pennsylvania)
Reading Human Relations Commission (Pennsylvania)
Rockland County Commission on Human Rights (New York)
Sioux City Human Rights Commission (Iowa)
Tennessee Human Rights Commission (Tennessee)
Topeka Human Relations Commission (Kansas)
Vermont Human Rights Commission (Vermont)
Waterloo Commission on Human Rights (Iowa)
York City Human Relations Commission (Pennsylvania)

B. Agencies Granted Certification

Asheville Office of Community Development (North Carolina)
Buncombe County Community Relations Council (North Carolina)
California Department of Fair Employment and Housing (California)
Cambridge Human Rights Commission (Massachusetts)
Charleston Human Rights Commission (West Virginia)
Charlotte-Office of Community Relations Committee (North Carolina)
Civil Rights and Conflict Resolution Section, Arizona Attorney General's Office (Arizona)

Colorado Civil Rights Division (Colorado)
Connecticut Commission on Human Rights and Opportunities (Connecticut)
Dallas Office of Housing Compliance, Fair Housing Administrator (Texas)
Dayton Human Relations Council (Ohio)
Delaware Human Relations Division (Delaware)
Des Moines Human Rights Commission (Iowa)
Dubuque Human Rights Department (Iowa)
Durham Human Relations Commission (North Carolina)
Fort Wayne Metropolitan Human Relations Commission (Indiana)
Fort Worth Human Relations Commission (Texas)
Florida Commission on Human Relations (Florida)
Gary Human Relations Commission (Indiana)
Georgia Commission on Equal Opportunity (Georgia)
Greensboro Human Relations Department (North Carolina)
Hawaii Civil Rights Commission (Hawaii)
Hammond Human Relations Commission (Indiana)
Huntington Human Relations Commission (West Virginia)
Indiana Civil Rights Commission (Indiana)
Iowa Civil Rights Commission (Iowa)
Omaha Human Relations Department (Nebraska)
Kansas City Human Relations (Missouri)
Kentucky Commission on Human Rights (Kentucky)
King County Office of Civil Rights and Compliance (Washington)
Knoxville Department of Community Development (Tennessee)
Lawrence Human Relations Commission (Kansas)
Lexington-Fayette Urban County Human Rights Commission (Kentucky)
Louisiana Public Protection Division (Louisiana)
Louisville-Jefferson County Human Relations Commission (Kentucky)
Maryland Commission on Human Relations (Maryland)
Massachusetts Commission Against Discrimination (Massachusetts)
Mecklenburg County Community Relations Committee (North Carolina)
Missouri Commission on Human Rights, Department of Labor and Industrial Relations (Missouri)
Nebraska Equal Opportunity Commission (Nebraska)
New Hanover Human Relations Commission (North Carolina)
North Carolina Human Relations Commission (North Carolina)
Ohio Civil Rights Commission (Ohio)
Oklahoma Human Rights Commission (Oklahoma)
Olathe Human Relations Commission, Housing and Human Services (Kansas)
Orlando Human Relations Department (Florida)
Pennsylvania Human Relations Commission (Pennsylvania)
Phoenix Equal Opportunity Department (Arizona)
Pinellas County Office of Human Rights (Florida)
Rhode Island Commission for Human Rights (Rhode Island)
Salina Human Relations Department (Kansas)
Seattle Human Rights Department (Washington)
Shaker Heights Fair Housing Review Board (Ohio)
South Bend Human Relations Commission (Indiana)
South Carolina Human Affairs Commission (South Carolina)
Springfield Human Relations Commission and Fair Housing (Illinois)
St. Petersburg Human Relations Department (Florida)
Tacoma Human Rights Department (Washington)
Tampa Office of Human Rights (Florida)
Texas Commission on Human Rights (Texas)
Utah Anti-Discrimination Division (Utah)
Virginia Department of Professional and Occupational Regulations, Fair Housing Administration (Virginia)
Washington State Human Rights Commission (Washington)
West Virginia Human Rights Commission (West Virginia)
Winston-Salem Human Relations Commission (North Carolina)

Dated: February 14, 2002.

Kenneth L. Marcus,

General Deputy Assistant Secretary for Fair Housing, and Equal Opportunity.

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Wednesday,
February 27, 2002

Part VI

Federal Emergency Management Agency

44 CFR Part 152
Assistance to Firefighters Grant Program; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 152

RIN 3067–AD21

Assistance to Firefighters Grant Program

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule with request for comments.

SUMMARY: We, FEMA, are publishing this interim final rule to provide new guidance on our program to make grants directly to fire departments of a State for the purpose of enhancing their ability to protect the health and safety of the public as well as that of firefighting personnel facing fire and fire-related hazards. The grants will be awarded on a competitive basis to the applicants that address the program's priorities, demonstrate financial need, and maximize the benefit to be derived from the grant funds.

DATES: This interim final rule is effective February 27, 2002. We invite comments on this interim final rule, which we should receive by April 29, 2002.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472. Comments may also be transmitted via fax to (202) 646–4536 or email to *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Grants Program Office, U.S. Fire Administration, Federal Emergency Management Agency, room 304, 500 C Street, SW., Washington, DC 20472, or call 1–866–274–0960, or e-mail *USFAGRANTS@fema.gov*.

SUPPLEMENTARY INFORMATION: This interim final rule provides guidance on the administration of grants made under the Federal Fire Protection and Control Act of 1974 (15 U.S.C. 2201 *et seq.*), as amended by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2002, Public Law 107–73. In fiscal year 2002, Congress appropriated a total of $360,000,000 to carry out the activities of this Assistance to Firefighters Grant Program. We have until September 30, 2002, to obligate $150,000,000 of the total and we must obligate the $210,000,000 balance by September 30, 2003.

The purpose of the program is to award grants directly to fire departments of a State for the purpose of enhancing their ability to protect the health and safety of the public, as well as that of firefighting personnel, facing fire and fire-related hazards.

We will award the grants on a competitive basis to the applicants that (1) address the program's priorities, and (2) demonstrate financial need and adequately demonstrate the benefit to be derived from their projects. For the purpose of this program, "State" is defined as the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. We will provide the chief executives of the States with information concerning the total number and dollar amount of awards made to fire departments in their States.

Eligible applicants for the Assistance to Firefighters Grant Program are limited to fire departments of a State as defined herein. A "fire department of a State" is defined as an agency or organization that has a formally recognized arrangement with a State, local or tribal authority (city, county, parish, fire district, township, town or other governing body) to provide fire suppression, fire prevention and/or rescue services to a population within a fixed geographical area. A fire department can apply for assistance for its emergency medical services unit provided the unit falls organizationally under the auspices of the fire department.

Fire departments, which are Federal, or contracted by the Federal government and who are solely responsible under their formally recognized arrangement for suppression of fires on Federal installations, are not eligible for this grant program. Fire departments or fire stations that are not independent but are part of, or controlled by a larger fire department or agency are typically not eligible. Fire departments that are for-profit departments (i.e., do not have specific non-profit status or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

Congress included in the legislation a list of fourteen activities eligible for funding under this program. In the first year of the program, because of the limited amount of time to establish the new program, we elected to limit the number of eligible activities to six (Training, Wellness and Fitness, Firefighting Equipment, Personal Protective Equipment, Firefighting Vehicles, and Fire Prevention Programs) for fiscal year 2001. After the completion of awards in fiscal 2001, we recognized that there remains an overwhelming need in these six areas. Congress also recognized this need in the conference committee report on FY 2002 appropriations bill for Veterans Affairs, Housing and Urban Development and Independent Agencies (signed into law as Pub. L. 107–73). Specifically, Congress encouraged us to also consider making grants in the area of emergency medical services, but expansion into other categories should be considered only after substantial progress has been made in addressing the needs associated with the original six activities. As such, we will limit the eligible activities to those funded last year (i.e., Training, Wellness and Fitness, Firefighting Equipment, Personal Protective Equipment, Firefighting Vehicles, and Fire Prevention Programs) but expand the eligible activities for fiscal year 2002 to include one new activity, fire department based Emergency Medical Services.

While the 2002 program largely parallels last year's program, we are instituting a programmatic approach to project formulation under the grant program this year in order to create a more responsive and flexible grant program that addresses a broader range of fire department needs. Applicants may apply for a number of activities within one grant proposal that address all of their needs within a programmatic or functional area. The programs, and associated activities, eligible for this year's grant program are as follows:

(a) *Fire Operations and Firefighter Safety Program.* Eligible activities under this function are Training, Wellness and Fitness, Firefighting Equipment, and Personal Protective Equipment.

(b) *Fire Prevention Program.* Eligible activities under this function include, but are not limited to Public Education and Awareness, Enforce Fire Codes, Inspector Certification, Purchase and Install Smoke Alarms, and Arson Prevention and Detection.

(c) *Emergency Medical Services Program.* Eligible activities under this function are Equipment and Training. Vehicles are not eligible in this programmatic area.

(d) *Firefighting Vehicle Acquisition Program.* Eligible apparatus under this program include, but are not limited to, pumpers, brush trucks, tankers, rescue, ambulances, quints, aerials, foam units, and boats.

Applicants seeking funding from this grant program in fiscal year 2002 may apply for assistance in only one of the four programmatic areas listed above. Within the programmatic areas, applicants may develop a comprehensive program that addresses their needs by applying for as many of the eligible activities as necessary within the areas listed. For example, if a fire department determines that it has needs in the area of fire operations, that fire department could apply for any one of the activities, or any combination of activities, or all of the activities listed within that program. But if a department wants a vehicle, it would have to apply under the vehicle program.

Eligible applicants will apply for this program on-line via FEMA's new electronic (e-grant) application process. (While we encourage all applicants to apply on-line, we will again be accepting paper applications. Details about how to submit a paper application can be found later in this section of the interim final rule or on the U.S. Fire Administration's website: *www.usfa.fema.gov*). The e-grant application consists of electronic versions of FEMA's grant forms. The application will also have some questions that are designed to provide general, generic information about the applicant. Then, the application will also have activity-specific questions for each activity that the applicant plans to implement with the grant funds. Included with the activity-specific questions, the applicants will be asked to provide details concerning the various budget items necessary to accomplish their proposed projects. The last piece of the application is the project narrative in which the applicant provides a detailed description of their planned activity or activities, the applicant's financial need, and the benefits to be derived from the costs of the activity.

We anticipate 20,000 to 25,000 fire departments will apply for assistance in this second year of the grant program. Out of the 20,000 to 25,000 applicants, we anticipate awarding approximately 4,000 grants. However, due to the length of time that it will take us to make these awards, we anticipate that approximately half of these awards will be made before September 30, 2002. The balance of the awards will have to be made before September 30, 2003.

In selecting applications for award, we will evaluate each application for assistance independently based on established applicant eligibility criteria, program priorities, the financial needs of the applicant, and an analysis of the benefits that would result from the grant award. In the initial screening of the applications, every application will be evaluated based on the answers to the activity-specific questions. The applications that most closely address the Assistance to Firefighters Grant Program's established priorities will be deemed to be in the "competitive range" and subject to a second level of review. This second level of review is conducted using technical review panels (made up of individuals from the fire service or fire service organizations) that assess the application's merits with respect to the detail provided in the narrative about the project, the applicant's financial need, and the project's purported benefit to be derived from the cost. At least three technical evaluation panelists will independently score each application and then discuss the merits/shortcomings of the application in order to reconcile any major discrepancies. A consensus on the score is not required. The scores of the panelists will be added together, and then divided by the number of panelists to arrive at the final score of the application. The highest scoring applications will then be considered for award. We will provide equal consideration to all applications in each evaluation phase, regardless of the program applied for and regardless of complexity of the proposal.

In order to fulfill our obligations under the law, after making funding decisions using rank order as a preliminary basis, we must ensure that grants are made to a variety of fire departments. The law requires a specific distribution of grant funds between career departments and combination/volunteer fire departments. Specifically, we must ensure that fire departments that have either all-volunteer forces of firefighting personnel or combined forces of volunteer and career firefighting personnel receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect. According to a 2000 survey by the National Fire Protection Association, volunteer and combination departments protect 55 percent of the population of the United States and career departments protect 45 percent of the population. Therefore, the target distribution of funds is 45 percent for career departments and 55 percent for volunteer/combination departments.

We also will ensure variety in terms of the size and character of the community it serves (urban, suburban, or rural), and the geographic location of the fire department. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit. Geographic location of an applicant will be used primarily as a final discriminator. In cases where applicants have similar qualifications, we may use the geographic location of the applicants to maximize the diversity of the awardees.

For this year's grant program, we will issue the Request for Application (RFA) packages on or about March 1, 2002. The application will be available on FEMA's newly created e-grant system and accessible from the FEMA and USFA Internet homepages. Although we do not encourage the use of paper applications, paper applications will be available for applicants that do not have access to the Internet.

Complete application packages must be submitted electronically or otherwise received by us on or before the close of business (5 p.m. EST) on April 1, 2002. Applications submitted by mail must be post-marked by March 25, 2002, or received by us on or before close of business (5 p.m. EST) on April 1, 2002. We will not accept late applications.

The automated grant application system has features built into it that will guarantee that the application is complete when submitted. We will not accept incomplete applications submitted by mail.

Eligible applicants can access an electronic version of the application form at the FEMA/USFA website (*www.usfa.fema.gov*). If an applicant does not have access over the Internet to the FEMA/USFA websites, the applicant may contact us directly to request a copy via mail. Although we do not recommend it due to inherent delays and relatively short application period, those applicants interested in receiving an application in the mail can (1) submit their request to USFA Grant Program Technical Assistance Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727–8998, (2) phone 866–274–0960, or (3) e-mail us at *USFAGRANTS@fema.gov*. Applicants not using the automated e-grant system should complete and submit their applications to us at USFA Grant Program Technical Assistance Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727–8998. Faxed applications will not be considered.

For last year's program, we solicited comments on both the collection and on the rule. We received no comments on the collection, but we received twelve (12) comments on the rule. Four comments were specific to the eligibility of certain items of expense and two were specific to the eligibility of certain types of applicants. All concerns over

eligibility have been addressed via clearer guidance and definitions in this year's rule. One of the eligibility comments dealt with our perceived policy not to fund quints or aerials. The rule indicated that we would not afford a positive competitive standing for ladder or aerials apparatus. We believe this comment was prompted by the author's belief that these types of apparatus were not eligible, but in fact they were competitive, but not as competitive as some other types of apparatus due to their cost. This position will carry into the second year of the program but it is better explained in this year's guidance. Two comments were concerned about cost-share and funding levels, respectively, and these comments have been addressed by clearer guidance in this year's rule.

One comment concerned the perception that providing a preference to fire departments without equipment over fire departments with obsolete equipment gives an advantage to new, start-up departments over other needy departments. While this point is true, we believe there are many departments in existence that are fighting fires without basic equipment, therefore, we did not change this policy.

Lastly, we had a comment on direct-delivery training. Specifically, the comment concerned the fact that weekend and evening training is not easily achieved via direct delivery because the trainers from the State training office typically work Monday through Friday during workday hours. The comment went further to state that most fire departments have training officers that need materials and equipment to deliver the training. Our response to this comment is that providing a training officer the necessary resources to deliver training for his department (and neighboring departments) is precisely the applicant that we wish to fund.

In addition to the grants available to fire departments in fiscal year 2002, we may also use up to $10,000,000 of the funds available under the Assistance to Firefighter Grant Program in order for us to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention programs.

In accordance with statutory requirement, our support to Fire Prevention activities will concentrate on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, we are also placing an emphasis on funding projects that focus on protecting the U.S. Fire Administration (USFA)-identified high-risk populations, i.e., children under fourteen, seniors over sixty-five, and firefighters. Since the unfortunate victims of burns experience both short- and long-term physical and psychological effects, we are also placing a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries, and primarily those affecting children.

We invite letters of interest from States, U.S. Territories or national, tribal, local and community organizations that wish to be considered for the funding of fire prevention programs in this and future years, pending authorization and appropriation. Letters of interest should describe in general terms the content and context of proposed activities. The letters of interest should be received at the mailing address noted below no later than April 30, 2002.

Please submit letters of interest to: Brian Cowan, Assistance to Firefighters Grant Program, USFA/FEMA, room 304, Federal Center Plaza, 500 C Street SW., Washington DC 20472, Attention: Special Prevention Grants.

Administrative Procedure Act Determination

We are publishing this interim final rule without opportunity for prior public comment under the Administrative Procedures Act (APA), 5 U.S.C. 553. In accordance with 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to comply with Public L. 106–398, which requires us to award the grants no later than September 30, 2002. We invite comments from the public on this interim final rule. Please send comments to FEMA in writing on or before April 29, 2002. After we have reviewed and evaluated the comments we will publish a final rule as required by the APA.

National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(i), (ii), (iii), (v), and (vi).

E.O. 12898, Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, February 16, 1994, agencies must undertake to incorporate environmental justice into their policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination in those programs, policies, and activities because of their race, color, or national origin. No action that we can anticipate under this interim final rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, the interim final rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

E.O. 12866, Regulatory Planning and Review

OMB has determined that this rule is a significant regulatory action under Executive Order 12866, 58 FR 51735, October 4, 1993. A significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule sets out our administrative procedures for making grants under the Assistance to Firefighter Grant Program. We expect to award approximately $345,000,000 in grants under this program in this second year. With cost sharing, we expect the total value of all grants to be in the $395,000,000 to $400,000,000 range. Therefore, we conclude this rule is a significant action. Therefore, OMB has determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866. In

light of this finding, we set forth the following regulatory impact analysis.

The proposed rule would facilitate the issuance of grants to local fire departments in the following programmatic areas: Fire operations and firefighter safety, fire prevention, emergency medical services, and firefighting vehicles. As mandated by section 1701(b) of Public Law 106–398, we are conducing a study with National Fire Protection Association to determine the effectiveness of this program in responding needs of the fire service. That study is scheduled to be competed this year. As required, we will submit that report to Congress; it will also be available to the general public. Although we do not currently have quantitative studies to measure the envisaged effects of the program, we have determined that the funding distributed under this program will have an immediate, lasting, and positive affect on the safety of the communities served by the recipient fire departments, as well as on the safety of the firefighters themselves.

Congress included in the legislation a list of fourteen activities eligible for funding under this program. We could have chosen to fund all fourteen activities. However, in the first year of the program, Fiscal Year 2001, because of the limited amount of time to establish the new program, we elected to limit the number of eligible activities to six (Training, Wellness and Fitness, Firefighting Equipment, Personal Protective Equipment, Firefighting Vehicles, and Fire Prevention Programs). FEMA and nine fire service organizations identified these activities as those that would be most beneficial to the public given the cost constraints of the program. After the awarding of the 2001 grants, we found that there remained an overwhelming need in these six activities. Therefore, we have decided to limit the program to these six activities and one new activity, fire department based Emergency Medical Services, which has also been identified as a program with overwhelming need.

The Office of Management and Budget has reviewed the interim final rule under Executive Order 12866.

Paperwork Reduction Act

Concurrent with the publication of this interim final rule, we are submitting a request for emergency review and approval of a new collection of information, which is contained in this interim final rule. We are seeking emergency approval of the Paperwork Reduction Act requirements in order to collect supplemental information from each applicant. Although we have made some changes to the application process based on the experience of last year, the information collection is substantially similar to last year. We will use the supplemental information included in grant application packages to evaluate the eligibility and merits of each request for funding. The supplementary information augments the screening and referral forms used by the grants administration program in determining whether applicants meet basic eligibility requirements.

We submitted this request to the Office of Management and Budget (OMB) for approval under the emergency processing procedures in OMB regulations 5 CFR 1320.13, and OMB approved this collection of information for use through August 31, 2002, under OMB Number 3067–0285.

We expect to follow this emergency request with a request for OMB approval to continue the use of this collection of information for a term of three years. The request will be processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, we invite the general public to comment on the proposed collection of information. This notice and request for comments complies with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Collection of Information

Title: Assistance to Firefighters Grant Program Grant Application Supplemental Information.

Type of Information Collection: Revisions of a currently Approved Collection OMB Number: 3067–0285.

Forms: Forms for the above fire grant program functions may be developed and made available to grant applicants. FEMA's grant administration forms are approved under OMB number 3067–0206, which expires February 29, 2004. The forms are SF 424, Request for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–20, Budget—Non Construction; FEMA Form 20–16, Summary of Assurances; SF–LLL, Lobbying Disclosure; and SF 270, Request for Advance or Reimbursement; SF 1199A, Direct Deposit Sign-Up Form and Performance Reports.

The supplemental information that FEMA is proposing to request is as follows:

(1) *General questions asked of all applicants.*

(a) Other than the individual listed on the SF–424, who in your department could we contact with regards to this grant?

(b) Are you a fire department or an authorized representative of a fire department?

(c) Are you a Federal fire department or contracted by the Federal government and solely responsible under a formally recognized arrangement for suppression of fires on Federal property?

(d) What kind of fire department are you: (i) Paid/career; (ii) volunteer; or (iii) combination?

(e) What percentage of your department's firefighting staff is career?

(f) What is the square mileage of your department's first-due response area?

(g) What is the permanent resident population of your department's first-due response area?

(h) Is your department located in an urban, suburban or rural setting?

(i) How many active firefighters are in the fire and EMS operations divisions of your department?

(j) How many stations are in your department?

(k) What is your department's average response time within the department's first-due response area?

(l) What services does your department provide?

(m) What percentage of your annual operating budget is for personnel?

(n) What percentage of your budget comes from: taxes, State or Federal grants, donations, and/or fund raising drives?

(o) List the types of firefighting vehicles you have in your fleet and the year those vehicles were manufactured. If you have more than two vehicles in any one category (i.e., pumper, tanker, brush), tell us the total number of vehicles in the category and the year the oldest and newest vehicle was manufactured.

(p) Over the last three years, what was the average annual number and type of incidents that your department responds to?

(q) Over the last three years, what was the average annual number of fire fatalities in your first-due response area?

(r) Over the last three years, what was the average annual number of times you received mutual/automatic aid?

(s) Over the last three years, what was the average annual number of times you provided mutual/automatic aid?

(t) Are you willing to comply with the grant program's cost-share requirement?

(u) Do you currently report to the national fire incident reporting system NFIRS)?

(v) If no, will you report if you are awarded a grant?

(2) *Questions for Applicants Applying for the Fire Operations and Firefighter Safety Program*

(a) Training Activities:

(i) Is the training planned under this grant direct-delivery training or off-site training?

(ii) What is the percentage of eligible staff within your department who will receive this training?

(iii) This training: will fulfill a statutory requirement; will achieve voluntary compliance with a national standard; or does not have a statutory basis or trade standard.

(iv) Is this training you are seeking: basic training for firefighters; officer training (either supervisory or safety officer); specialized training; or other?

(v) Will this training be used primarily for Rapid Intervention Teams (RITs)?

(b) Wellness and Fitness Activities

(i) Do you have a wellness/fitness program at your department?

(ii) Do you currently offer, or will this grant program provide, entry physical examinations?

(iii) Do you currently offer, or will this grant program provide, a job-related immunization program?

(iv) Including entry-level physicals and immunizations, what does your existing wellness/fitness program currently offer and what will your program offer during the grant year (i.e., entry physical examination, annual physical examination, job related immunization program, health screening program, formal fitness and injury prevention program, crisis management program, employee assistance program, incident rehabilitation program, injury/illness rehabilitation, or other)?

(v) Will participation in the wellness/fitness program be mandatory?

(vi) Do you, or will you, offer incentives to participate in the program?

(c) Personal Protective Equipment Acquisition

(i) What types of personal protective equipment do you propose to acquire?

(ii) How many units?

(iii) What is the cost per unit?

(iv) What percentage of your active firefighting staff has this specific type of personal protective equipment that meets current NFPA and OSHA standards?

(v) If you are proposing to purchase PASS devices, what type of PASS devices?

(vi) Are you seeking this grant to: equip your firefighting staff for the first time; replace obsolete or sub-standard equipment; or equip your staff for a new mission?

(vii) Will this training be used primarily for Rapid Intervention Teams (RITs)?

(d) Firefighting Equipment Acquisition

(i) What types and amounts of equipment will your department purchase with this grant?

(ii) How much does each piece of proposed equipment cost?

(iii) The equipment purchased under this grant program: is necessary for basic firefighting capabilities, but has never been owned by the department; will replace old, obsolete, or substandard equipment owned by the department; or will expand the capabilities of the department into a new mission.

(iv) The equipment purchased under this grant program: will bring the department into statutory compliance; will bring the department into voluntary compliance with a national standard; or has no statutory basis or and is not a national standard.

(v) Will the equipment purchase under this grant program benefit the health and safety of the firefighters and/or the community?

(vi) Will this training be used primarily for Rapid Intervention Teams (RITs)?

(3) *Questions for Applicants Applying for the Fire Prevention Program*

(i) Does your department currently have a fire prevention program/plan?

(ii) Will the grant: (1) Establish a new program; (2) expand an existing program into new areas; or (3) augment an existing fire prevention program?

(iii) In what areas do you plan on using these fire prevention grant funds: public education programs; purchase and installation of residential/public detection and suppression systems (that address USFA-targeted risks, i.e., children under the age of fourteen, seniors over sixty-five years of age and firefighters); development/enforcement of codes; public information materials; presentation aids and equipment; or other?

(iv) Is your program based on specific USFA operational or performance objectives?

(v) Will this program utilize partnerships with other organizations or groups in your community?

(vi) Who is your target audience: USFA-identified target (children under the age of fourteen, seniors over sixty-five years of age and firefighters), or other high-risk population?

(vii) Will this program be sustained beyond the grant period?

(viii) Will your department periodically evaluate the program's impact on the community?

(4) *Questions for Applicants Applying for the Emergency Medical Services (EMS) Program*

(a) EMS Equipment.

(i) What EMS equipment will your department buy?

(ii) How many units?

(iii) What is the cost per unit?

(iv) Why are you asking for the equipment?

(v) Will this equipment bring you into compliance with State or Federal standards/regulations?

(vi) What level of patient care is currently provided by your department and to what level of care will this equipment bring your department?

(b) EMS Training.

(i) What type of training will you conduct?

(ii) What level of patient care is currently provided by your department and to what level of proficiency will you be training your personnel?

(5) *Questions for Applicants Applying in the Firefighting Vehicle Acquisition Program*

(a) What type of vehicle will you use the grant money to purchase?

(b) The purpose of this grant is to: (i) Obtain additional vehicle for fleet, (ii) move an older unit to reserve fleet or retire an old vehicle, (iii) refurbish an old vehicle, or (iv) purchase a new vehicle to fulfill a new mission.

(c) How many vehicles of the type you are proposing to replace or purchase does your department own?

(d) What is the newest primary response vehicle in this class that you own?

(e) What is the oldest response vehicle in this class that you own?

(f) What is the mileage on the primary response vehicle you are proposing to replace?

(g) What are the average numbers of responses per year for the primary response vehicle you are proposing to replace?

Project Narrative: Each application must include a narrative statement not to exceed five pages. The narrative should contain a detailed description of the proposed project and its budget, a statement that demonstrates the financial need of the fire department and a statement that details the benefits to be derived by your department and/or community from the expenditure of grant funding for the purposes of competitive evaluation and rating. The section in the narrative that discusses the applicants financial need should include information on the extent to which the applicant has been able to secure financial assistance from any Federal agency for programs or activities similar to those applied for under this grant program.

Applicants that need assistance in formulating the justification or narrative statement required by this program may contact us for technical assistance. We will also place information and

technical assistance onto the FEMA/USFA websites. Our Technical Assistance Center's toll free number is 866–274–0960, our email address is *USFAGRANTS@fema.gov*, and our website addresses are *www.fema.gov* and *www.usfa.fema.gov*.

Abstract: The supplemental information will correspond to the preliminary evaluation criteria. The information will be submitted by grant applicants who apply for funding under the Assistance to Firefighters Grant Program authorized by Congress in fiscal year 2001. The information collected will be used to evaluate each of the 20,000 to 25,000 anticipated applications objectively to verify eligibility and to determine which of the proposed projects most closely address the established program priorities and which applicants have the greatest needs. The information will also be used to determine which projects offer the highest benefits for the costs incurred and the information will be used to ensure that FEMA's responsibilities mandated in the legislation are fulfilled accurately and efficiently. FEMA will also use the information to ensure that funds are distributed to volunteer and career departments consistent with the mandates of Congress. Additionally, we seek to ensure variety in awarding grants to urban, suburban, and rural fire departments and, among states.

Estimated Annual Burden Hours: The annual burden hours for this collection of information range from 335,998 to 421,081 hours with an average of 378,540 annual burden hours.

Grant Applicants:				
SF–424 Application Facesheet	20,000 to 25,000	0.75 hr. 45 minutes	15,000 to 18,750.	
FEMA Form 20–20 Budget Non-Construction.	20,000 to 25,000	9.7 hrs. or 9 hours 42 min.	194,000 to 242,500.	
FEMA Form __, Project Narrative	20,000 to 25,000	2.0 hrs	40,000 to 50,000.	
FEMA Form 20–16 Summary of Assurances.	20,000 to 25,000	1.7 hrs. 1 hr 42 min	34,000 to or 42,500.	
SF–LLL Lobbying Disclosure	20,000 to 25,000	0.1666 hr. or 10 minutes.	3,332 to 4,165.	
Grant Application Supplemental Program Information—General Questions for all Applicants.	20,000 to 25,000	1.0 hr.	20,000 to 25,000.	
Sub-Total				
Range	20,000 to 25,000		306,332 to 382,915.	
Avg.	22,500	15.32 hrs.	344,624	$5,169,360
Grant Application Supplemental Program Information—Specific Questions (Applicants May Choose Only One Activity)				
• Vehicle Acquisition	9,000 to 13,000	0.5	4,500 to 6,500 avg. 5,500.	
• Firefighting Operations and Safety	9,000 to 13,000	1.0	9,000 to 13,000 avg. 11,000.	
• Emergency Medical Services	2,000 to 4,000	0.5	1,000 to 2,000 avg. 1,500.	
• Fire Prevention Programs	1,000 to 2,000	0.5	500 to 2,000 avg. 1,250.	
			15,000–23,500 avg. 19,250.	$288,750
Grantee Collections/Reporting:				
Payment Document SF–270	4,000 × 2 responses	1.0	8,000.	
Direct Deposit Form SF–1199a	4,000	0.1666 hr. or 10 minutes.	666.	
SF 20–10 Financial Status Report	4,000	1.0	4,000.	
Final Performance Report (as required by the Articles of Agreement).	4,000	0.5	2,000.	

This collection of information uses forms approved by OMB under FEMA's Grants Administration Program requirements under OMB Number 3067–0206, which expires February 29, 2004.

Estimated Cost to the Respondents: The estimated average cost of this collection is $5,678,100 ($15.00 per hour × 378,540 hours). This information collection is a grant application, therefore, the frequency of response for all forms, except the SF–270, is only once per year. The SF–270 will average twice per year per grantee and that is factored into the burden hours.

Comments: We solicit written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other technological collection techniques may further reduce the respondents' burden. OMB should receive comments by March 29, 2002. FEMA will continue to accept comments through April 29, 2002.

Addressee: Interested persons should submit written comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 by March 29, 2002. FEMA will continue to accept comments through April 29, 2002. Those written comments on the collection of information, including the burden estimate, should be sent to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resources Planning Directorate, Federal Emergency

Management Agency, 500 C Street, SW., room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Anderson at (202) 646–2625 (voice), (202) 646–3524 (facsimile), or by e-mail at *muriel.anderson@fema.gov*.

Executive Order 13132, Federalism

This Executive Order sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this interim final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the rule does not have federalism implications as defined by the Executive Order. The rule sets out our administrative procedures for making grants available for fire departments to enhance their ability to protect the health and safety of the public and that of their firefighting personnel facing fire and fire-related hazards. The rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law, nor does it limit State policymaking discretion.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 USC 801 *et seq.* The rule is a "major rule" within the meaning of that Act. It will result in an annual effect on the economy of $100,000,000 or more. The rule sets out our administrative procedures for making grants available for eligible applicants, i.e., fire departments, to enhance their ability to protect the health and safety of the public as well as that of the firefighting personnel facing fire and fire-related hazards. We expect to award approximately $345,000,000 in grants under this program. With cost sharing, we expect the total value of all grants to be in the $390,000,000 to $400,000,000 range.

In compliance with section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 808(2), for good cause we find that notice and public procedure on this final rule are impractical, unnecessary, or contrary to the public interest due to the requirements of Public Law 107–73, which requires us to award at least $150,000,000 in grants no later than September 30, 2002. (The balance of the available funding, $210,000,000 will be awarded before September 30, 2003.) In order to comply with this statutory mandate, we need to begin accepting applications no later than March 1, 2002. We invite comments from the public on this interim final rule. Accordingly, this final rule is effective February 27, 2002.

Unfunded Mandates Reform Act

The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, 2 USC 1501 *et seq.*, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 152

Assistance to Firefighters Grant Program.

Accordingly, we revise part 152 of 44 CFR chapter I, to read as follows:

PART 152—ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

Sec.

Authority: 15 U.S.C. 2201 *et seq.*; Pub.L. 107–73, 115 Stat. 688.

§ 152.1 Purpose and eligible uses of grant funds.

(a) This competitive grant program will provide funding directly to fire departments of a State for the purpose of enhancing the department's ability to protect the health and safety of the public, as well as that of firefighting personnel, facing fire and fire-related hazards. In order to achieve this stated intent we invite fire departments to apply for assistance in any one (1) of the four (4) program areas described in paragraphs (a)(1) through (4) of this section.

(1) *Fire Operations and Firefighter Safety Program.* Appropriate activities under this program area include: Training, Wellness and Fitness, Firefighting Equipment and Personal Protective Equipment. Applicants can apply for as many related activities under this function as necessary.

(i) Training Activities: (A) Training firefighting personnel in fire-fighting, emergency response, supervision and safety, arson prevention and detection, handling of hazardous materials, or training firefighting personnel to provide training in any of these areas. Eligible uses of training funds include but are not limited to purchase of training curricula, training equipment and props including trailers, training services, attendance at formal training forums, etc. Tow vehicles or other means of transport may be eligible as a transportation expense if adequately justified in the proposal, but transportation expenses will be limited to $6,000 per year. Compensation to volunteer firefighters for wages lost as a result of attending training under this program is an eligible expense if justified in the grant proposal. Overtime expenses paid to career firefighters to attend training, or overtime expenses paid to firefighters to cover for their colleagues while their colleagues are in training, is an eligible expense if justified in the grant proposal. Even though compensation is an eligible expense, proposals that contain such compensation expenses may be less favorable than similar proposals without compensation expenses due to the benefit/cost element in the evaluation process.

(B) Activities that are not eligible in this area include construction of facilities such as classrooms, buildings, towers, etc. Modifications to an existing facility are allowable if the modifications involve only minor renovation as defined herein (i.e., limited to minor interior alterations costing less than $10,000).

(ii) Wellness and Fitness Activities:

(A) Establishing and/or equipping wellness and fitness programs for firefighting personnel, including the procurement of medical services to ensure that the firefighting personnel are physically able to carry out their duties (purchase of medical equipment is not eligible under this activity). Expenses to carry out wellness and fitness activities that include costs such as personnel (i.e., health-care consultants, trainers, and nutritionists), physicals, equipment (including shipping), supplies, and other related

contract services that are directly associated with the implementation of the proposed activity are eligible.

(B) Transportation expenses and fitness club memberships for the firefighters or their families would not be eligible under the wellness and fitness program. Other activities that are not eligible in this area include construction of facilities to house a fitness program such as exercise or fitness rooms, showers, etc. Modifications to an existing facility are allowable if the modifications involve only renovations as defined herein (i.e., limited to minor interior alterations costing less than $10,000).

(iii) Firefighting Equipment Acquisition: (A) Acquiring additional firefighting equipment, including equipment needed directly for fire suppression or to enhance the safety or effectiveness of firefighting or rescue activities. Compressor systems, cascade systems, or similar SCBA refill systems are eligible expenditures in this area as are individual communications and accountability systems. The cost of shipping equipment purchased under this program is also an eligible expense. Thermal imaging cameras are eligible but the number of cameras that can be purchased with grant funds will be limited based on the population served by the department applying for assistance. Departments that serve communities of less than 20,000 can purchase one thermal imaging camera with grant funds if awarded a grant; departments serving communities between 20,000 and 50,000 can purchase for two cameras with grant funds if awarded a grant; and, departments serving communities of over 50,000 can purchase three cameras with grant funds if awarded a grant. Portable radios and/or mobile communications equipment (including mobile repeaters) are eligible.

(B) Integrated communications systems (or parts thereof), such as computer-aided dispatch, towers, repeaters, etc., are not eligible under this activity. Vehicles, as defined herein, are not eligible under this activity.

(iv) Personal Protective Equipment Acquisition: (A) Acquiring personal protective equipment required for firefighting personnel as approved by the Occupational Safety and Health Administration, and other personal protective equipment for firefighting personnel to enhance their operational safety. Eligible personal protective equipment includes clothing such as "Turnout Gear" or "Bunker Gear" (including boots, pants, coats, gloves, hoods, goggles, vests, and helmets), self-contained breathing apparatus, spare cylinders, and personal alert safety systems.

(B) The purchase of three-quarter length rubber boots is an ineligible expenditure under this activity. Uniforms (formal/parade or station/duty) or uniform items (hats, badges, etc.) are also not eligible expenditures under this activity.

(2) *Fire Prevention Programs.* (i) Applicants can apply for as many related activities under this function as necessary. Appropriate activities in this program include: Public Education, Public Awareness, Enforcing Fire Codes, Inspector Certification, Purchase and Install Smoke Alarms, and Arson Prevention and Detection Activities. Eligible expenses to carry out these activities would include costs such as fire education safety trailer, personnel, transportation, equipment, supplies, and contracted services which are directly associated with the implementation of the proposed activity. Tow vehicles or other means of transport may be eligible as a transportation expense if adequately justified in the proposal, but transportation expenses will be limited to $6,000 per year.

(ii) Construction is not eligible under this program. A safety village that is not transportable would be considered construction, and therefore, not eligible.

(3) *Emergency Medical Services Program.* (i) Applicants can apply for as many related activities under this function as necessary. Appropriate activities in this program are training (instructional costs (i.e., books, materials, equipment, supplies, and exam fees), certification/re-certification expenses, and continuing education programs) and equipment (defibrillators, basic and advanced life support equipment, universal precaution supplies (i.e., medical PPE) mobile and portable communication equipment, computers, expendable supplies, and infectious disease control and decontamination systems). Tow vehicles or other means of transport may be eligible as a transportation expense if adequately justified in the proposal, but transportation expenses will be limited to $6,000 per year.

(ii) Not eligible in this program are vehicles such as ambulances, medications and integrated communication systems (or parts thereof), such as computer aided dispatch, towers, fixed repeaters, etc.

(4) *Firefighting Vehicles Program.* Eligible apparatus under this function includes, but is not limited to, pumpers, engines, brush trucks, tankers, rescue, ambulances, quints, aerials, foam units, and boats. Applicants may apply for only one vehicle under this program per year. Eligible expenses under this program would include the cost of the vehicle and associated equipment necessary to conform to applicable national standards. Due to their cost, aerials and quints have a lower benefit than pumpers, engines, tankers, and brush trucks. New, used or refurbished vehicles are eligible. Custom vehicles are eligible, but they may not be as favorably evaluated as a lower costing commercial vehicle. An allowance for transportation to inspect a vehicle under consideration or during a vehicle's production would be eligible if included in the grant proposal.

(b) Other Costs. (1) Administrative costs are allowable under any of the program areas listed in paragraph (a)(1) through (4) of this section in accordance with OMB Circular A–87. (See 5 CFR 1510.3 for availability of OMB circulars.) Applicants may apply for administrative costs if the costs are directly related to the implementation of the program for which they are applying. Applicants must list their costs under the "other" category in their budget and explain what the costs are for in their project narrative. Examples of eligible administrative costs would be shipping, computers, office supplies, etc.

(2) Applicants that have an approved indirect cost rate may charge indirect costs to the grant if they submit the documentation that supports the rate to us. We will allow the rate to be applied as long as it is consistent with its established terms. For example, some indirect cost rates may not apply to capital procurements; in this case, indirect cost rates would not apply for a grant to purchase equipment or a vehicle.

(3) Some applicants with large awards may be required to undergo an audit in accordance with OMB Circular A–133, specifically, any recipient of Federal funding that spends in excess of $300,000 of those funds in a year. The costs incurred for such an audit would be an expenditure that is eligible for reimbursement if included in the budget proposal.

(4) The panelists will review the applications that make it into the competitive range and judge each application on its own merits. The panelists will consider all expenses budgeted, including administrative and indirect, as part of the cost-benefit determination.

§ 152.2 Definitions.

Active firefighter is a member of a fire department or organization in good

standing that is qualified to respond to and extinguish fires or perform other fire department emergency services and has actively participated in such activities during the past year.

Career department is a fire suppression agency or organization in which all active firefighters are assigned regular duty shifts and receive financial compensation for their services rendered on behalf of the department.

Combination department is a fire suppression agency or organization in which at least one active firefighter receives financial compensation for his/her services rendered on behalf of the department and at least one active firefighter does not receive financial compensation for his/her services rendered on behalf of the department other than life/health insurance, workmen's compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

Construction is the creation of a new structure or any modification of the footprint or profile of an existing structure. Changes or renovations to an existing structure that do not change the footprint or profile of the structure but exceed either $10,000 or 50 percent of the value of the structure, are also considered construction. Changes that are less than $10,000 and/or 50 percent of the value of the structure are considered renovations.

Direct delivery of training is training conducted within a training organization's own jurisdiction using the organization's own resources (trainers, facilities, equipment, etc.).

Fire department or fire department of a State is an agency or organization that has a "formally recognized arrangement" with a State, local or tribal authority (city, county, parish, fire district, township, town, or other non-Federal governing body) to provide fire suppression, fire prevention and rescue services within a fixed geographical area.

(1) A fire department can apply for assistance for its emergency medical services unit provided the unit falls organizationally under the auspices of the fire department.

(2) Fire departments that are Federal, or contracted by the Federal government and whose sole responsibility is suppression of fires on Federal installations, are not eligible for this grant program. Fire departments or fire stations that are not independent but are part of, or controlled by a larger fire department or agency are typically not eligible. Fire departments that are for-profit departments (i.e., do not have specific non-profit status or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

Firefighter see the definition of *Active firefighter* in this section.

First-due response area is a geographical area in proximity to a fire or rescue facility and normally served by the personnel and apparatus from that facility in the event of a fire or other emergency as the first responders.

Formally recognized arrangement is an agreement between the fire department and a local jurisdiction such that the jurisdiction has publicly deemed that the fire department has the first-response responsibilities within a fixed geographical area of the jurisdiction. Often this agreement is recognized or reported to the appropriate State entity with cognizance over fire department such as registration with the State Fire Marshal's office or the agreement is specifically contained in the fire department's or jurisdiction's charter.

Integrated communication systems and devices are equipment or systems for dispatch centers or communication infrastructure. Examples of these include 911 systems, computer-aided dispatch systems, global positioning systems, towers, fixed repeaters, etc.

New mission is a first-responder function that a department has never delivered in the past or that was once delivered but has since been abandoned by the department due to the lack of funding or community support. Examples include technical search and rescue, emergency medical services, hazardous materials response, etc. A new mission does not include services already provided from existing facilities. Opening additional stations to provide similar services would be considered an expansion of existing services.

Population means permanent residents in the first-due response area or jurisdiction served by the applicant. It does not include seasonal population or any population in area that the fire department responds to under mutual/automatic aid agreements.

Prop is something that can be held up in a classroom or moved from site to site in order to facilitate or enhance the training experience. A training tower (pre-fabricated or constructed) is not a prop.

Renovation means changes or alterations or modifications to an existing structure that do not exceed either $10,000 or 50 percent of the value of the structure and do not involve a change in the footprint or profile of the structure.

State means any of the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Supplies means any expendable property that typically has a one-time use limit and an expectation of being replaced within one year.

Vehicle is a mechanized device used for carrying passengers, goods, or equipment. Examples of vehicles include, but are not limited to: pumpers, brush trucks, tankers, tenders, attack pumpers, rescue (transport and non-transport), ambulances, foam units, quints, aerials, ladders, towers, hazmat vehicles, squads, crash rescue (ARFF), boats, hovercraft, planes, and helicopters.

Volunteer Department is a fire suppression agency or organization in which no active firefighters are considered full-time employees, and which no members receive financial compensation for their services rendered on behalf of the department other than life/health insurance, workers' compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

§ 152.3 Availability of funds.

(a) Fire departments that have received funding under the Assistance to Firefighter Grant Program in previous years are eligible to apply for funding in the current year. No applicant can receive more than $750,000 in Federal grant funds under this program in any fiscal year. The awards made under the Assistance to Firefighter Grant Program are for one year only. The period of performance will be detailed in the award documents provided each grantee.

(b) The scoring of the applications will determine the distribution of the funding among the eligible programs. Notwithstanding anything in this part, no more than 25 percent of the grant funds shall be used to assist recipients to purchase firefighting vehicles and not less than 5 percent of all funds appropriated for firefighter assistance shall be available for fire prevention programs.

(c) We will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. We may disallow or recoup amounts that

fall within other Federal agency's authority.

§ 152.4 Roles and responsibilities.

(a) Applicants must:

(1) Complete the application and certify to the accuracy of the application;

(2) Certify that they are an eligible applicant, i.e., a fire department, as defined in this rule;

(3) Certify as to the characteristics of their community, i.e., urban, suburban, or rural;

(4) Certify to the size of the population of the community served; and,

(5) Certify to the type of department, i.e., volunteer/combination or career.

(b) Recipients (Grantees) must agree to:

(1) Share in the costs of the projects funded under this grant program. Fire departments in areas serving populations over 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to 30 percent (30%) of the total project cost. Fire departments serving areas with a population of 50,000 or less will have to match the Federal grant funds with an amount of non-Federal funds equal to 10 percent (10%) of the total project cost. All cost-share contributions must be cash. No "in-kind" contributions will be considered for the statutorily required cost-share. No waivers of this requirement will be granted except for fire departments of Insular Areas as provided for in 48 U.S.C. 1469a.

(2) Maintain operating expenditures in the areas funded by this grant activity at a level equal to or greater than the average of their operating expenditures in the two years preceding the year in which this assistance is received.

(3) Retain grant files and supporting documentation for three years after the conclusion of the grant.

(4) Report to FEMA on the progress made on the grant and financial status of the grant.

(5) Make their grant files, books and records available if requested for an audit to ensure compliance with any requirement of the grant program.

(6) Provide information to the U.S. Fire Administration (USFA) national fire incident reporting system (NFIRS) for the period covered by the assistance. If a grantee does not currently participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as they develop the capacity to report.

(c) FEMA Activities:

(1) We will ensure that the funds are awarded based on the priorities and expected benefits articulated in the statute, this part 152, and USFA's strategic plan. USFA's operational and performance objectives of its strategic plan are to reduce losses of life and reduce economic losses due to fire and related emergencies. Specific target groups are children under 14 years old, seniors over 65 years old, and firefighters.

(2) We will ensure that not more than twenty-five percent (25%) of the appropriated funding will be used to purchase firefighting vehicles.

(3) We will ensure that not less than five percent (5%) of the appropriated funds are made available to national, State, local, or community organizations, including fire departments, for the purpose of carrying out fire prevention programs.

(4) We will ensure that fire departments with volunteer staff, or staff comprised of a combination of career fire fighters and volunteers, receive a proportion of the total grant funding that is not less than the proportion of the United States population that those firefighting departments protect.

(5) We will ensure that grants are made to fire departments located in urban, suburban, and rural communities.

(6) We will strive to ensure geographic diversity of awards as stipulated in §152.6.

§ 152.5 Review process and evaluation criteria.

(a) We will use the narratives/supplemental information provided by the applicants in their grant applications to evaluate, on a competitive basis, the merits and benefits of each request for funding. In selecting applications for award, we will evaluate each application for assistance independently based on established eligibility criteria, the program priorities, the financial needs of the applicant, and an analysis of the benefits that would result from the grant award. Every application will be evaluated based on the answers to the activity-specific questions during our initial screening. The applications that are determined to best address the Assistance to Firefighters Grant Program's established priorities during this initial screening will be in the "competitive range" and subject to a second level of review.

(b)(1) In order to be successful at this level of the evaluation, an applicant must complete the narrative section of the application package. The narrative should include a detailed description of the planned activities and uses for the grant funds including details of each budget line item. For example, if personnel costs are included in the budget, please provide a break down of what those costs are for. The narrative should explain why the grant funds are needed and why the department has not been able to obtain funding for the planned activities on its own. A discussion of financial need should include a discussion of any Federal funding received for similar activities. Finally, the applicant's narrative will detail the benefits the department or community will realize as a result of the grant award.

(2) Applicants may seek assistance in formulating their cost-benefit statement or any other justification required by the application by contacting our Grant Program Technical Assistance Center at 866–274–0960 or by email at *USFAGRANTS@fema.gov*. We will also place information to assist you in the development of a competitive grant application on the FEMA/USFA websites.

(c) This second level of review will be conducted using a panel of technical evaluation panelists that assess the application's merits with respect to the clarity and detail provided in the narrative about the project, the applicant's financial need, and the project's purported benefit to be derived from the cost. The technical evaluation panelists will independently score each application before them and then discuss the merits/shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The highest scoring applications will then be considered for award. We seek to maximize the benefits derived from the funding by crediting applicants with the greatest financial need and whose proposed activities provide the greatest benefit.

(d) In addition to the project narrative, the applicant must provide an itemized budget detailing the use of the grant funds. If an applicant is seeking funds in more than one eligible activity within a program, separate budgets will have to be generated for each activity and then an overall or summary budget would have to be generated. For those applicants applying on line, the summary budget will be automatically generated by the e-grant system.

(e) Specific rating criteria for each of the eligible programs follow in paragraphs (e)(1) through (4) of this section. These rating criteria will provide an understanding of the grant

program's priorities and the expected cost effectiveness of any proposed projects.

(1) *Fire Operations and Firefighter Safety Program.*

(i) *Training Activities.* We believe that more benefit is derived from the direct delivery of training than from the purchase of training materials, equipment or props. Therefore, applications focused on direct delivery of training will receive a higher competitive rating. We also believe that funding of basic firefighting training to an operational level (i.e., training in basic firefighting duties or operating fire apparatus) has greater cost-benefit than funding of officer training. Likewise, we feel there is a greater cost-benefit to officer training than for other specialized training. Train-the-trainer activities are rated high due to the obvious return on investment. We will also accord higher rating to programs achieving benefits from statutorily required training over non-mandatory or strictly voluntary training. Finally, we will rate more highly those programs that benefit the highest percentage of targeted personnel within a fire department. Training designated for Rapid Intervention Teams will have a slightly higher competitive advantage.

(ii) *Wellness and Fitness Activities.* We believe that in order to have an effective wellness/fitness program, fire departments must offer both an entry physical examination and an immunization program. Accordingly, applicants in this category must currently offer both benefits, or must propose to initiate both a physical examination and an immunization program with these grant funds in order to receive additional consideration for funding this activity. We believe the greatest benefit will be realized by supporting new wellness and fitness programs, and therefore, we will accord higher competitive ratings to those applicants lacking wellness/fitness programs over those applicants that already possess a wellness/fitness program. We believe that programs with annual physicals and general health screening provide high benefits and programs with incident rehabilitation, formal fitness regiments, and/or injury prevention components offer significant benefits. Finally, since participation is critical to achieving any benefits from a wellness or fitness program, we will give higher competitive rating to departments whose wellness and fitness programs mandate participation as well as programs that provide incentives for participation.

(iii) *Firefighting Equipment Acquisition.* We believe that this grant program will achieve the greatest benefits if we provide funds to fire departments purchasing basic firefighting equipment. We will afford departments buying basic firefighting equipment for the first time (equipment never owned before) a higher competitive rating than departments buying replacement equipment or equipment that will be used to expand the department's capabilities into new mission areas. We believe there is more benefit realized to bring a department up to the applicable minimum standard (i.e., as required by statute, regulation, or professional firefighting guidance), rather than to the department that is replacing equipment or enhancing capabilities. Because of the obvious benefits, we will also give higher competitive rating to departments that are mainly purchasing equipment designed to protect the safety of the firefighters. Equipment designated for Rapid Intervention Teams will have a slightly higher competitive advantage.

(iv) *Personal Protective Equipment Acquisition.* One of the stated purposes of this grant program is to protect the health and safety of firefighters. In order to achieve this goal and maximize the benefit to the firefighting community, we believe that we must fund those applicants needing to provide personal protective equipment (PPE) to a high percentage of their personnel. Accordingly, we will give a high competitive rating in this category to fire departments in which a large percentage of their active firefighting staff do not have any personal protective equipment and to departments that wish to purchase enough PPE to equip one hundred percent (100%) of their active firefighting staff. The goal is to provide all active firefighters with a complete set of equipment, breathing apparatus as well as turnout gear. We will also give a higher competitive rating to departments that are purchasing the equipment for the first time as opposed to departments replacing obsolete or substandard equipment (*e.g.,* equipment that does not meet current National Fire Protection Association (NFPA) and Occupational Safety and Health Administration (OSHA) standards), or purchasing equipment for a new mission. Departments that are replacing used gear that is very old, will be afforded a higher competitive rating than a department whose gear is relatively new. We will provide a higher competitive rating to departments requesting integrated Personal Accountability Safety System (PASS) devices than to those departments that are requesting non-integrated PASS devices. We also believe it is more cost beneficial to fund departments that have a high volume of responses per year before funding less active departments. Equipment designated for Rapid Intervention Teams will have a slightly higher competitive advantage.

(2) *Fire Prevention Program.* We believe that the public as a whole will receive the greatest benefit by creating new fire prevention programs.

(i) Our priority is to target these funds to fire departments that do not have an existing fire prevention program as opposed to those departments that already have such a program. Also, we believe the public will benefit greatly from establishing fire prevention programs that will continue beyond the grant year as opposed to limited efforts. Therefore, we will give a higher competitive rating to programs that will be self-sustaining after the grant period.

(ii) Because of the benefits to be attained, we will give a higher competitive rating to programs that target one or more of USFA's identified high-risk populations (i.e., children under fourteen years of age, seniors over sixty-five and firefighters), and programs whose impact is/will be periodically evaluated.

(iii) We believe that public education programs, programs that develop and enforce fire codes and standards, and arson prevention and detection programs have a high benefit, therefore, they will receive the highest competitive rating.

(iv) We also believe programs that purchase and install residential and public detection and suppression systems provide significant benefits.

(v) Programs that are limited to the purchase of public information materials and presentation aids and equipment achieve the least benefit, therefore, these types of activities will receive a lower competitive rating.

(3) *Emergency Medical Services Program.* Our overall objective in this program is to elevate all emergency medical services to an intermediate life-support level (i.e., EMT–D or EMT–I).

(i) We believe that enhancing or expanding an existing service that currently meets basic life-support to an intermediate life-support system would realize the most benefit. We will give a higher competitive rating to fire departments that are planning on acquiring an intermediate life-support system than to those that wish to reach a basic life-support level.

(ii) We also believe that it is more cost effective to expand an existing service than it would be to create a new service. Therefore, we will give a higher competitive rating for fire departments

that are enhancing their existing service over those that do not have an emergency medical service.

(iii) While we support CPR and first-responder level training, we will afford a lower priority to train firefighters in basic emergency medical technology (EMT–B) certification levels. We do not believe that it is our mission to create emergency medical services in areas where the local authorities have not yet committed to providing such services.

(4) *Firefighting Vehicle Program.* (i) We believe that more benefit will be realized by funding fire departments that own few or no firefighting apparatus than by providing funding to a department with numerous vehicles. Therefore, we will give a higher competitive rating in the apparatus category to fire departments that own few or no firefighting vehicles. We will also give higher competitive rating to departments that have not recently purchased a new firefighting vehicle, and departments that wish to replace an old, high-mileage vehicle or a vehicle that has sustained a high number of responses.

(ii) Because of the significant cost of certain types of apparatus and the limited amount of funding available in this program, we do not believe that it would be cost effective to fund vehicles with ladder or aerial apparatus. Therefore, we will lower the competitive rating of applications proposing such purchases.

(iii) Vehicles that are for basic firefighting operations (i.e., pumpers, tankers, and brush trucks) are considered to have higher benefits than vehicles that have limited or specialized uses.

(iv) We believe that more benefit will accrue to a community that needs a new vehicle (i.e., the initial purchase of a new or used vehicle) than for communities that need to replace a vehicle that does not conform to applicable standards. Replacing a vehicle has more benefit than purchasing a vehicle to expand the operational capacity of a department into a new mission area.

(v) While no competitive advantage has been assigned to the purchase of commercial vehicles versus custom vehicles, or used vehicles versus new vehicles in the preliminary evaluation of applications, it has been our experience that depending on the type and size of department, the technical evaluation panelists often prefer low-cost vehicles when evaluating the cost/benefit section of the project narratives. Panelists will be provided with guidance (such as the General Services Administration's price schedules) for use in their evaluation on the reasonableness of vehicle costs.

(vi) Finally, we believe that it would be more beneficial to the nation if we gave these vehicle awards to as many fire departments as possible, therefore, we will allow each fire department to apply for only one vehicle per year.

§ 152.6 Application review and award process.

(a) As stated in §152.5, we will evaluate each application in the preliminary screening process to determine which applications best address the program's established priorities. The best applications as determined in this preliminary step will be deemed to be in the "competitive range." All applications in the competitive range will be subject to a second level review by a technical evaluation panel. Using the evaluation criteria delineated in §152.5, the panelists will score each application they evaluate. The assigned score will reflect the degree to which the applicant: clearly relates their proposed project; demonstrates financial need; and, details a high benefit to cost value of the proposed activities.

(b) Our award decisions will be based on the stated priorities of the grant program, the demonstrated need of the applicant, and the benefits to be derived from the proposed projects. We will make awards on a competitive basis, i.e., we will fund the highest scored applications before considering lower scored applications.

(c) In order to fulfill our obligations under the law, we may also make funding decisions using rank order as the preliminary basis then based on the type of fire department (paid, volunteer, or combination fire departments), the size and character of the community it serves (urban, suburban, or rural), and the geographic location of the fire department. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit.

§ 152.7 Grant payment, reporting and other requirements.

(a) Grantees will have twelve months to incur obligations to fulfill their responsibilities under this grant program. The performance period of each grant will be detailed in the Articles of Agreement that we provide each grantee. Grantees may request funds from us as reimbursement for expenditures made under the grant program or they may request funds for immediate cash needs under FEMA regulations (44 CFR 13.21).

(b) Generally, fire departments should not use grant funds to pay for products and services contracted for, or purchased prior to the effective date of the grant. However, we will consider requests for reimbursement for these on an exceptional basis. Expenses incurred after the application deadline but prior to award may be eligible for reimbursement if the expenses were justified, unavoidable, consistent with the scope of work, and specifically approved by us.

(c) The recipients of funding under this program must report to us on how the grant funding was used and the benefits that resulted from the grant. This will be accomplished via submission of a final report. Details regarding the reporting requirements will be provided in the Articles of Agreement provided to each grantee. Additionally, fire departments that receive funding under this program must agree to provide information to the national fire incident reporting system (NFIRS) for the period covered by the assistance. If a grantee does not currently participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as they develop the capacity to report.

§ 152.8 Application submission and deadline.

For each year that this program is authorized after fiscal year 2002, we will announce the grants availability via Notice of Funds Availability. That notice will contain all pertinent information concerning the eligible funding activities, priority funding levels (as appropriate), application period, timelines, and deadlines.

§ 152.9 Technical or procedural error.

(a) We will review our decision with respect to a particular application only where the applicant alleges that we have made a material technical or procedural error and can substantiate such allegation. Requests for reconsideration based upon technical or procedural error should be directed to: Director, Grants Program Office, U.S. Fire Administration, FEMA, 500 C Street, SW., room 304, Washington, DC 20472.

(b) We must receive a request for reconsideration under paragraph (a) of this section within 60 days of the date of the notice of our decision.

(c) As grants are awarded on a competitive basis, in accordance with the findings of an independent panel of experts, we will not entertain requests

for reconsideration based upon the merits of an original application. Similarly, we will not consider new information provided after the submission of the original application. In the case of new information, we encourage applicants to incorporate said information into their applications for future grant cycles.

Dated: February 19, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–4388 Filed 2–26–02; 8:45 am]

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Federal Register

Wednesday,
February 27, 2002

Part VII

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7147–8]

RIN 2060–AH17

National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. The EPA has identified these facilities as major sources of emissions of hazardous air pollutants (HAP), such as glycol ethers, toluene, and xylene. These NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all leather finishing operations that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). We estimate the final NESHAP will reduce nationwide emissions of HAP from leather finishing operations by 375 tons per year (tpy). In addition, the final NESHAP will reduce non-HAP emissions of volatile organic compounds (VOC) by 750 tpy. The emissions reductions achieved by these final NESHAP, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the CAA.

EFFECTIVE DATE: The effective date is February 27, 2002. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of February 27, 2002.

ADDRESSES: *Docket.* Docket No. A–99–38 contains the information considered by EPA in developing the NESHAP. This docket is located at the U.S. EPA, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Room M–1500, Waterside Mall, Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in § 63.13. For information concerning the analyses performed in developing these NESHAP, contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division, (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; facsimile number (919) 541–3470; electronic mail address: *schrock.bill@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Comments. The NESHAP for leather finishing operations were proposed on October 2, 2000 (65 FR 58702) and seven comment letters were received on the proposal. The comment letters are available in Docket A–99–38, along with a summary of the comment letters and EPA's responses to the comments. In response to the public comments, EPA adjusted the final NESHAP where appropriate.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC Code	NAICS Code	Examples of regulated entities
Industry	3111	3161	Leather finishing operations.
Federal government			Not affected.
State/local/tribal government			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Not all facilities classified under the NAICS or SIC codes are affected. Other types of entities not listed could be affected. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5285 of the final NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. The NESHAP for leather finishing operations were proposed on October 2, 2000 (65 FR 58702). This action announces the EPA's final decision on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of these NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 29, 2002. Only those objections to this rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final NESHAP may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. What Are the Environmental, Energy, and Economic Impacts?

The nationwide environmental and cost impacts for today's final rule are the same as for the proposed rule. For all affected sources, we determined the total capital cost associated with the MACT level of control is approximately $5.6 million, and a total annualized cost of approximately $440,000 per year. The total annualized costs include the annualized capital costs and the costs associated with compliance monitoring, recordkeeping, and reporting.

We determined the overall cost associated with the MACT level of control to be about $1,300 per ton of HAP emissions reduced. The MACT level of control will reduce HAP emissions from existing sources by approximately 375 tpy, a reduction of approximately 51 percent. We do not expect any significant secondary air emissions, wastewater, solid waste, or energy impacts resulting from the final rule.

Additional information on the costs and environmental impacts of control options are discussed in the following four documents, which can be found in docket A–99–38:

(1) National Emission Standards for Hazardous Air Pollutants: Leather Finishing Operations, proposed rule (65 FR 58702, October 2, 2000).

(2) "Public Comments and EPA Responses to the Proposed NESHAP for Leather Finishing Operations," memorandum dated July 17, 2001.

(3) "Environmental and Energy Impacts for Leather Tanning and Finishing MACT Floor Regulatory Option," memorandum dated September 30, 1999.

(4) "Cost Impacts Associated with HAP Emissions Reductions for Leather Tanning and Finishing Operations," September 2, 1999.

The economic impacts of the MACT floor are discussed in the proposed rule and in the document, "Economic Impact Analysis of Leather Tanning and Finishing Operations NESHAP." The major findings regarding the economic impacts of the rule have not changed as a result of public comments on the proposed rule. The total annualized costs associated with these final NESHAP are approximately $440,000 in 1997 dollars. This cost represents only 0.014 percent of total industry revenues based on 1996 value of shipments. Because the total annualized costs associated with complying with the final NESHAP are such a small percentage of total market revenues (value of shipments), it is unlikely that market prices or production will change as a result of these final NESHAP. As an alternative to performing a market analysis, we evaluated the cost impacts on facility and firm revenues. The calculation of cost-to-sales ratios projects that only one firm (owning one facility) will have an impact that is greater than 1 percent of revenues (1.52 percent). All other firms have impacts well below 1/10th of 1 percent and range from 0.00 percent to 0.09 percent of firm revenues. Given that overall costs represent a small fraction of industry revenues, and individual firm revenues experience minimal impacts, we conclude that economic impacts associated with this final rule will be negligible.

II. What Changes and Clarifications Did We Make Since Proposal?

This section describes the major changes made in response to public comments and several clarifications that did not change any of the proposed regulatory requirements.

A. Product Process Operations

In the final rule, we have assigned the same HAP emission limit to the water-resistant leather product process operations and specialty leather finishing product process operations. Thus, the product process operation is now referred to as "water-resistant/specialty." In the final rule, we have also added a definition for "specialty leather." Under the proposed rule, specialty leather finishing had been categorized as a nonwater-resistant leather product process operation with a corresponding lower HAP emission limit.

B. MACT Floor Determination

In the final rule, we revised the MACT emission limits as follows:

(1) The MACT emission limit for existing sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations was decreased from 7.1 to 6.8 pounds of HAP per 1,000 square feet of leather processed.

(2) The MACT emission limit for new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations was decreased from 2.9 to 2.5 pounds of HAP per 1,000 square feet of leather processed.

(3) The MACT emission limit for existing sources with water-resistant/specialty leather product process operations was decreased from 5.9 to 5.6 pounds of HAP per 1,000 square feet of leather processed. The revised definition of water-resistant product process operations to include specialty leather increases the emission limit for specialty leather product process operations from 3.4 to 5.6 pounds of HAP per 1,000 square feet of leather processed.

(4) The MACT emission limit for existing sources with nonwater-resistant leather product process operations was increased from 3.4 to 3.7 pounds of HAP per 1,000 square feet of leather processed.

C. Definitions

We have revised the definition of "leather finishing" to include dyes or other non film-forming coatings. We have also included a definition to describe a new term, "specialty leather."

D. Clarifications

In the final rule, we have clarified the following points:

(1) Facilities that finish leather solely for research and development purposes are not subject to this rule.

(2) The quantity of leather shipped can be used as a surrogate for the quantity of leather processed in a particular month.

(3) The quantity of leather processed cannot be recounted when the leather needs additional finishing or reworking, unless the piece of leather is completely stripped of all applied finishes and reprocessed through the entire finishing operation as if it were a new piece of leather.

(4) Paper or cardstock may be used as a substrate material for determining the mass of finish add-on.

(5) We updated the Maeser Flexes standard testing method to ASTM Standard D2099–00.

(6) A total of 36 samples (i.e., three sections of leather substrate from at least 12 sides of leather) must be tested to determine the water-resistant characteristics of the leather.

III. How Did We Respond to Significant Comments?

This section presents a summary of our responses to significant public comments received on the proposed rule. A comprehensive summary of public comments and responses can be found in the document entitled "Public Comments and EPA Responses to the Proposed NESHAP for Leather Finishing Operations" (Docket No. A–99–38).

A. Rule Applicability

Comment: One commenter requested that provisions in the rule should clarify that the "once in, always in" policy for MACT standards will not apply in certain cases. Primarily, this provision would apply to sources that have subsequently implemented pollution-prevention techniques to reduce HAP emissions from the source. If the source is able to reduce its emission level such that the source is no longer considered a major source, the source can then be excluded from the MACT requirements.

Response: EPA has been working to develop regulatory options that would allow qualifying sources to satisfy the MACT requirements through innovative, streamlined approaches, if, after a source achieves compliance with an applicable MACT rule, it achieves HAP emissions reductions equivalent to or better than MACT levels of control through pollution-prevention measures. The regulatory options under consideration will include components that meet the legal requirements of the CAA and still resolve the issues regarding pollution prevention. We plan to develop rule language to propose to amend either the NESHAP General Provisions or existing MACT rules. We project proposing these amendments later in 2002.

B. MACT Floor Determination

Comment: One commenter stated that the original HAP emission data submitted by the source for 1997 operations did not include ethylene glycol monobutyl ether acetate (EGBE) (CAS No. 112–07–2). The total HAP emissions including EGBE is nearly twice the value of their original HAP emissions submission. The commenter is concerned that other leather finishing operations may have excluded EGBE from their respective total HAP emissions estimated. The commenter also requested that the MACT floor be determined only from sources that have included EGBE in their total HAP emissions estimate.

Response: In 1999, we distributed a second industry survey to ensure that all leather finishing operations had reported all 1997 HAP emissions, including glycol ethers and specifically, EGBE. Initially, we decided not to use the glycol ethers data gathered from the second industry survey in the MACT floor determinations for the proposed rule because of some observed inconsistencies with the reported data. Upon further evaluation of the glycol ether data, we have been able to resolve the inconsistencies. As a result, the total HAP emissions reported from six sources have been adjusted. Four sources resulted in higher total HAP emissions and two sources resulted in lower HAP emissions. The total HAP emissions adjustments affected the MACT determination for existing sources with any of the following three product process operations: (1) Upholstery leather (less than 4 grams finish add-on per square foot), (2) water-resistant/specialty leather, and (3) nonwater-resistant leather. In addition, the total HAP emissions adjustments affected the MACT determination for new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations.

We revised the MACT determinations for existing and new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations as a sole result of adjustments to reported total HAP emissions. The MACT emission limit for existing sources in the upholstery leather (less than 4 grams finish add-on per square foot) product process operations decreased from 7.1 to 6.8 pounds of HAP per 1,000 square feet of leather processed. The MACT emission limit for new sources in the upholstery leather (less than 4 grams finish add-on per square foot) product process operations decreased from 2.9 to 2.5 pounds of HAP per 1,000 square feet of leather processed.

We revised the MACT determinations for existing sources with water-resistant/specialty leather and nonwater-resistant leather product process operations as a result of adjustments to the reported total HAP emissions and modifications to the definitions of these two product process operations. We reassigned specialty leather processes from the nonwater-resistant product process operation to the water-resistant product process operation based on greater similarities in applied coatings. Both specialty and water-resistant leather require the application of resins to produce the special color, texture, and water-resistant qualities.

Comment: Two commenters requested a recalculation of the MACT floor to exclude leather finishing operations that have closed since the initial survey of industry data in 1998. The commenters noted that four leather finishing operations have closed since 1998. One commenter also noted that one operation was recently sold to another company.

Response: The commenters are correct that four leather finishing operations have closed. The determination of a MACT floor is based on a single period in time. For the leather finishing operations NESHAP, the MACT floor performance levels are based on industry performance data for calendar year 1997. Emissions and production rates are dynamic and may change since the selected performance period. Since the data obtained from the industry were considered representative for calendar year 1997, we have decided to make no changes to the MACT floor HAP emission limits to account for recent facility closings. In this regard, we note that no commenter suggested that the emission information from these now-closed facilities was inaccurate or unrepresentative. We are not aware of any such deficiencies. Our view is the data are both accurate and representative, thus we do not see any technical reason for not including this information in a calculation of emissions reductions reflecting MACT.

C. Product Process Operations

Comment: Two commenters requested that we establish an additional leather product process operation and corresponding MACT floor performance level for "specialty" leather finishing. The commenters stated that no suitable method has been developed to replace the solvents necessary for the finishing of specialty leathers. At the sources' current HAP emission rates, the sources will be unable to achieve the MACT performance levels. In addition, one commenter requested that the additional product process operation be assigned a HAP emission limit of no less than 6.0 pounds of HAP per 1,000 square feet of leather processed.

Response: Based on a review of additional information provided by one of the commenters on specialty leather processing operations, we have decided to modify and expand the definition of the water-resistant leather product process operations to specifically include specialty leather finishing.

Under the proposed rule, we categorized specialty leather finishing as a nonwater-resistant leather product process operation. The two sources identified with specialty leather finishing operations have now shifted from the nonwater-resistant product process operation to the water-resistant/specialty product process operation. Thus, we have revised the MACT determination for these two product process operations to reflect the updated set of affected sources with each product process operation. However, we cannot arbitrarily assign a MACT performance level to a product process operation such as the 6.0 pounds of HAP per 1,000 square feet of leather processed, as suggested by commenters, especially without providing any supporting information. The MACT floor for existing sources in each leather product process operation must be determined as the average emission limitation achieved by the best performing 12 percent. In cases where 30 or fewer sources exist in a source category, or subcategory (the situation here for nonwater-resistant leather product process operations), the MACT floor is defined as the average emission limitation achieved by the best performing five sources.

The MACT emission limits for the water-resistant/specialty and nonwater-resistant leather product process operations are based on the top five sources included in the revised definition of these two product process operations. The revised emission limits include all appropriate adjustments for variability and glycol ethers data from the second industry survey, as discussed in a previous comment concerning EGBE. As a result of the revised process definitions and adjustments for glycol ethers, the MACT emission limit for existing sources in the modified water-resistant/specialty leather product process operations has decreased from 5.9 to 5.6 pounds of HAP per 1,000 square feet of leather processed. The MACT emission limit for existing sources in the nonwater-resistant leather product process operations increased from 3.4 to 3.7 pounds of HAP per 1,000 square feet of leather processed. Under the proposed rule, specialty leather operations were established with an emission limit of 3.4 pounds of HAP per 1,000 square feet of leather processed as a nonwater-resistant product process operation. Under the final rule, specialty leather operations are now established with an increased emission limit of 5.6 pounds of HAP per 1,000 square feet of leather processed as a water-resistant/specialty product process operation.

D. Definitions

Comment: One commenter requested that the definition of leather "finishing" be expanded to include coatings, such as dyes and pigments, that are not film-forming materials.

Response: The EPA agrees with the commenter and the final rule reflects a revised definition of leather finishing. The definition now states "Leather finishing adjusts and improves the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprising dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers."

IV. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a rule that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the rule. The EPA also may not issue a rule that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the rule, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because today's final rule applies to affected sources in the leather finishing industry, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), it did consult with State

governments during development of today's final rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's final rule is not subject to Executive Order 13045 because it establishes environmental standards based on technology, not health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, today's final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost of this final rule for any 1 year has been estimated at $440,000 per year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that today's final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires us to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. We must prepare a regulatory flexibility analysis unless we determine that the rule will not have a "significant economic impact on a substantial number of small entities." Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. There are currently a total of 16 facilities that are major sources of HAP emissions and affected by this final rule. The industry is characterized as having some finishing operations that are relatively small, often specializing in the manufacture of leather with unique attributes, while others employ several hundred people and produce a wide variety of leathers. However, many of the smaller leather finishing operations are owned by ultimate parent firms that are classified as large corporations. Also, this industry typically operates with more than 300 establishments, so only a small fraction of the firms in the industry are impacted by the final rule. We determined that the 16 affected facilities are owned by 14 parent firms, and only three of these firms are classified as small by the previously mentioned definition. Nearly all of the firms (small and large) have very minimal impacts which range from 0.00

percent to 0.09 percent of firm revenues. Only one firm of the 14 will experience compliance costs that exceed 1 percent of firm revenues (1.52 percent), and this firm is a small business. This impact, however, is not considered significant for this industry. Typical profit margins for the leather industry average 3.5 percent.

Although this final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of this final rule on small entities. We have worked closely with the Leather Industry of America in determining the form of the standard and establishing methods for minimizing the compliance burden. This outreach included a series of meetings over a 2-year period and our attendance at the industry's annual regulatory meeting of the Leather Industry of America. These meetings and outreach provided updates to the industry on the progress of the final rule and also forecasting the timeline for compliance with the final rule. In addition, these meetings provided us with useful information that we used in developing the final rule. For instance, currently no facilities use add-on control devices, and we anticipate that no facilities will need to install a device to achieve compliance with the final rule. This will minimize costs to achieve compliance as well as simplify demonstrating compliance since already maintained purchase and usage records are all that will be needed to demonstrate compliance. We are also requiring that compliance demonstrations be conducted monthly, rather than on a daily basis, which we believe will reduce the amount of records necessary to demonstrate compliance with the final rule. Furthermore, we require the minimum monitoring, recordkeeping, and reporting requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A).

G. Paperwork Reduction Act

The information collection requirements in today's final rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 1985–02), and you may obtain a copy from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, reporting, and recordkeeping burden for this collection for all affected facilities, as averaged over the first 3 years after the effective date of the rule, is estimated to be 485 labor hours per year at a total annual cost of $21,600. The total 3-year burden of monitoring, recordkeeping, and reporting for this collection for all affected facilities is estimated at 1,455 labor hours at a total annual cost of $64,700. There are no required capital and operations and maintenance costs for the leather finishing operations NESHAP. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources people spend to generate, maintain, keep, or disclose to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems to collect, validate, and verify information; process, maintain, disclose, and provide information; adjust ways to comply with any previously applicable instructions and requirements; train people to respond to a collection of information; search data sources; collect and review information; and transmit or otherwise disclose the information.

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

H. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

Consistent with the NTTAA, the EPA conducted a search for EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph) and found no candidate VCS for use in identifying glycol ethers, toluene, and xylene. This final rule references the National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR part 63, subpart SS). Since there are no new technical standard requirements resulting from specifying subpart SS in this final rule, and no candidate consensus standards were identified for EPA Method 311 (glycol ethers, toluene, and xylene), EPA is not adopting any VCS in today's final rule.

Section 63.5290(a) of today's final rule lists EPA Method 311. The EPA Method 311 has been used by States and industry for approximately 5 years. Nevertheless, under § 63.7(f) of 40 CFR part 63, subpart A, today's final rule allows any State or source to apply to EPA for permission to use an alternative method in lieu of EPA Method 311 listed in § 63.5290(a).

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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. The EPA will submit a report containing this final 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), and therefore will be effective February 27, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 13, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by adding and reserving paragraphs (b)(19) and (b)(20), and adding paragraph (b)(21) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(19) [Reserved]

(20) [Reserved]

(21) ASTM D2099–00, Standard Test Method for Dynamic Water Resistance of Shoe Upper Leather by the Maeser Water Penetration Tester, IBR approved for § 63.5350.

* * * * *

3. Part 63 is amended by adding subpart TTTT to read as follows:

Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

Sec.

What This Subpart Covers

§ 63.5280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. These standards limit HAP emissions from specified leather finishing operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.5285 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a leather finishing operation that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions. A leather finishing operation is defined in § 63.5460. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(c) You are not subject to this subpart if your source finishes leather solely for the purpose of research and development.

§ 63.5290 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at leather finishing operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities used for the multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of the leather surface. This subpart applies to the leather finishing operations listed in paragraphs (b)(1) through (4) of this section and as defined in § 63.5460, whether or not the operations are collocated with leather tanning operations:

(1) Upholstery leather with greater than or equal to 4 grams finish add-on per square foot of leather;

(2) Upholstery leather with less than 4 grams finish add-on per square foot of leather;

(3) Water-resistant/specialty leather; and

(4) Nonwater-resistant leather.

(c) An affected source does not include portions of your leather finishing operation that are listed in paragraphs (c)(1) and (2) of this section:

(1) Equipment used solely with leather tanning operations; and

(2) That portion of your leather finishing operation using a solvent degreasing process, such as in the manufacture of leather chamois, that is already subject to the Halogenated Solvent Cleaning NESHAP (40 CFR part 63, subpart T).

(d) An affected source is a new affected source if you commenced construction of the affected source on or after October 2, 2000, and you meet the applicability criteria at the time you commenced construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.5295 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before February 27, 2002, then you must comply with the emission standards for new and reconstructed sources in this subpart no later than February 27, 2002.

(2) If you startup your affected source after February 27, 2002, then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than February 28, 2005.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source, as specified at § 63.5290(d), or a reconstructed affected source, as specified at § 63.5290(e), must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source, as specified at § 63.5290(f), must be in compliance with this subpart no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.5415 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

Standards

§ 63.5305 What emission standards must I meet?

The emission standards limit the number of pounds of HAP lost per square foot of leather processed. You must meet each emission limit in Table 1 of this subpart that applies to you.

Compliance Requirements

§ 63.5320 How does my affected major source comply with the HAP emission standards?

(a) All affected sources must be in compliance with the requirements of this subpart at all times, including periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must perform all of the items listed in paragraphs (c)(1) through (10) of this section:

(1) Submit the necessary notifications in accordance with § 63.5415.

(2) Develop and implement a plan for demonstrating compliance in accordance with § 63.5325.

(3) Submit the necessary reports in accordance with § 63.5420.

(4) Keep a finish inventory log, as specified at § 63.5335(b), to record monthly the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(5) Keep an inventory log, as specified at § 63.5430(f), to record monthly the surface area of leather processed in 1,000's of square feet for each product process operation. You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(6) Determine the actual HAP loss from your affected source in accordance with § 63.5335.

(7) Determine the allowable HAP loss for your affected source in accordance with § 63.5340.

(8) Determine the compliance ratio for your affected source each month as specified at § 63.5330. The compliance ratio compares your actual HAP loss to your allowable HAP loss for the previous 12 months.

(9) Maintain the compliance ratio for your affected source at or below 1.00 in accordance with § 63.5330.

(10) Maintain all the necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.5430.

§ 63.5325 What is a plan for demonstrating compliance and when must I have one in place?

(a) You must develop and implement a written plan for demonstrating compliance that provides the detailed procedures you will follow to monitor and record data necessary for demonstrating compliance with this subpart. Procedures followed for quantifying HAP loss from the source and amount of leather processed vary from source to source because of site-specific factors such as equipment design characteristics and operating conditions. Typical procedures include one or more accurate measurement methods such as weigh scales and volumetric displacement. Because the industry does not have a uniform set of procedures, you must develop and implement your own site-specific plan for demonstrating compliance not later than the compliance date for your source. You must also incorporate the plan for demonstrating compliance by reference in the source's title V permit. The plan for demonstrating compliance must include the items listed in paragraphs (a)(1) through (7) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Provide a detailed description of all methods of measurement your source will use to determine your finish usage, HAP content of each finish, quantity of leather processed, and leather product process operation type.

(4) Specify when each measurement will be made.

(5) Provide examples of each calculation you will use to determine your compliance status. Include examples of how you will convert data measured with one parameter to other terms for use in compliance determination.

(6) Provide example logs of how data will be recorded.

(7) Provide a quality assurance/quality control plan to ensure that the data continue to meet compliance demonstration needs.

(b) You may be required to revise your plan for demonstrating compliance. We may require reasonable revisions if the procedures lack detail, are inconsistent, or do not accurately determine finish usage, HAP content of each finish, quantity of leather processed, or leather product process operation type.

§ 63.5330 How do I determine the compliance ratio?

(a) When your source has processed leather for 12 months, you must determine the compliance ratio for your affected source by the fifteenth of each month for the previous 12 months.

(b) You must determine the compliance ratio using Equation 1 of this section as follows:

$$\text{Compliance Ratio} = \frac{\text{Actual HAP Loss}}{\text{Allowable HAP Loss}} \qquad \text{(Eq. 1)}$$

Where:

Actual HAP Loss = Pounds of actual HAP loss for the previous 12 months, as determined in § 63.5335.

Allowable HAP Loss = Pounds of allowable HAP loss for the previous 12 months, as determined in § 63.5340.

(1) If the value of the compliance ratio is less than or equal to 1.00, your affected source was in compliance with the applicable HAP emission limits of this subpart for the previous month.

(2) If the value of the compliance ratio is greater than 1.00, your affected source was deviating from compliance with the applicable HAP emission limits of this subpart for the previous month.

§ 63.5335 How do I determine the actual HAP loss?

(a) This section describes the information and procedures you must use to determine the actual HAP loss from your leather finishing operation. By the fifteenth of each month, you must determine the actual HAP loss in pounds from your leather finishing operation for the previous month.

(b) Use a finish inventory log to record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. Figure 1 of this subpart shows an example log for recording the minimum information necessary to determine your finish usage and HAP loss. The finish inventory log must contain, at a minimum, the information for each type of finish applied listed in paragraphs (b)(1) through (7) of this section:

(1) Finish type.

(2) Pounds (or density and volume) of each finish applied to the leather.

(3) Mass fraction of HAP in each applied finish.

(4) Date of the recorded entry.

(5) Time of the recorded entry.

(6) Name of the person recording the entry.

(7) Product process operation type.

(c) To determine the pounds of HAP loss for the previous month, you must first determine the pounds of HAP loss from each finish application according to paragraph (c)(1) or (2) of this section.

(1) For facilities not using add-on emission control devices, the entire HAP content of the finishes are assumed to be released to the environment. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the HAP loss in pounds from each finish application. Sum the pounds of HAP loss from all finish applications recorded during the previous month to determine the total monthly HAP loss in pounds from your finishing operation.

(2) For facilities using add-on emission control devices, the finish inventory log and the emission reduction efficiency of the add-on capture and control devices can be used to determine the net HAP loss in pounds. The emission reduction efficiency for a control device must be determined from a performance test conducted in accordance with §§ 63.5375 and 63.5380. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the gross HAP loss in pounds from each finish application prior to the add-on control device. Multiply the gross HAP loss by the percent emission reduction achieved by the add-on control device and then subtract this amount from the gross HAP loss. The result is the net HAP loss in pounds from each finish application. Sum the pounds of net HAP loss from all finish applications recorded during the previous month to determine the total monthly net HAP loss in pounds from your finishing operation.

(d) After collecting HAP loss data for 12 months, you must also determine by the fifteenth of each month the annual HAP loss in pounds by summing the monthly HAP losses for the previous 12 months. The annual HAP loss is the "actual HAP loss," which is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

§ 63.5340 How do I determine the allowable HAP loss?

(a) By the fifteenth of each month, you must determine the allowable HAP loss in pounds from your leather finishing operation for the previous month.

(b) To determine the allowable HAP loss for your leather finishing operation, you must select the appropriate HAP emission limit, expressed in pounds of HAP loss per 1,000 square feet of leather processed, from Table 1 of this subpart, for each type of leather product process operation performed during the previous 12 months. Under the appropriate existing or new source column, select the HAP emission limit that corresponds to each type of product process operation performed during the previous 12 months. Next, determine the annual total of leather processed in 1,000's of square feet for each product process operation in accordance with § 63.5400. Then, multiply the annual total of leather processed in each product process operation by the corresponding HAP emission limit to determine the allowable HAP loss in pounds for the corresponding leather product process operation. Finally, sum the pounds of HAP loss from all leather product process operations performed in the previous 12 months. Equation 1 of this section illustrates the calculation of allowable HAP loss as follows:

$$\text{Allowable HAP Loss} = \sum_{i=1}^{n} \left(\text{Annual Total of Leather Processed}_i * \text{HAP Emission Limit}_i \right) \qquad \text{(Eq. 1)}$$

Where:

Annual Total of Leather Processed = 1,000's of square feet of leather processed in the previous 12 months in product process operation "i".

HAP Emission Limit = From Table 1 of this subpart, the HAP emission limit in pounds of HAP loss per 1,000 square feet of leather processed for product process operation "i".

n = Number of leather product process operation types performed during the previous 12 months.

(c) The resulting "allowable HAP loss" is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

§ 63.5345 How do I distinguish between the two upholstery product process operations?

(a) Product process operations that finish leather for use in automobile and furniture seat coverings are categorized as an upholstery product process operation. There are two upholstery product process operations subject to the requirements of this subpart—operations with less than 4 grams of finish add-on per square foot, and operations with 4 grams or more of finish add-on per square foot. You must distinguish between the two upholstery product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source.

(b) You must determine finish add-on by calculating the difference in mass before and after the finishing process. You may use an empirical method to determine the amount of finish add-on applied during the finishing process, as described in paragraphs (b)(1) through (4) of this section:

(1) Weigh a one square foot representative section of polyester film, paper, cardstock, or equivalent material substrate to be finished. This will provide an initial mass and surface area prior to starting the finishing process.

(2) Use a scale with an accuracy of at least 5 percent of the mass in grams of the representative section of substrate.

(3) Upon completion of these measurements, process the representative section of substrate on the finishing line as you would for a typical section of leather.

(4) After the finishing and drying process, weigh the representative section of substrate to determine the final mass. Divide the net mass in grams gained on the representative section by its surface area in square feet to determine grams per square foot of finish add-on. Equation 1 of this section illustrates this calculation, as follows:

$$\text{Finish Add-On} = \frac{\left(\text{Final Mass} - \text{Initial Mass}\right)}{\left(\text{Surface Area}\right)} \qquad \text{(Eq. 1)}$$

Where:

Finish Add-On = Grams per square foot of finish add-on applied to a representative section of polyester film or equivalent material substrate.

Final Mass = Final mass in grams of representative section of polyester film or equivalent material substrate, after finishing and drying.

Initial Mass = Initial mass in grams of representative section of polyester film or equivalent material substrate, prior to finishing.

Surface Area = Surface area in square feet of a representative section of polyester film or equivalent material substrate.

(c) Any appropriate engineering units may be used for determining the finish add-on. However, finish add-on results must be converted to the units of grams of finish add-on per square foot of leather processed. If multiple representative leather sections are analyzed, then use the average of these measurements for selecting the appropriate product process operation.

§ 63.5350 How do I distinguish between the water-resistant/specialty and nonwater-resistant leather product process operations?

(a) Product process operations that finish leather for nonupholstery use are categorized as either water-resistant/specialty or nonwater-resistant product process operations. You must distinguish between the water-resistant/specialty and nonwater-resistant product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source. Water-resistant and nonwater-resistant product process operations for nonupholstery use can be distinguished using the methods described in paragraph (b) of this section. Specialty leather product process operations for nonupholstery use can be distinguished using the criteria described in paragraph (c) of this section.

(b) To determine whether your product process operation produces water-resistant or nonwater-resistant leather, you must conduct the Maeser Flexes test method according to American Society for Testing and Materials (ASTM) Designation D2099–00 (incorporated by reference-see § 63.14) or a method approved by the Administrator.

(1) Statistical analysis of initial water penetration data performed to support ASTM Designation D2099–00 indicates that poor quantitative precision is associated with this testing method. Therefore, at a minimum, 36 leather substrate samples (*i.e.*, three sections of leather substrate from at least 12 sides of leather), must be tested to determine the water-resistant characteristics of the leather. You must average the results of these tests to determine the final number of Maeser Flexes prior to initial water penetration.

(2) Results from leather samples indicating an average of 5,000 Maeser Flexes or more is considered a water-resistant product process operation, and results indicating less than 5,000 Maeser Flexes is considered a nonwater-resistant product process operation. However, leather samples resulting in less than 5,000 Maeser Flexes may be categorized as specialty leather in paragraph (c) of this section.

(c) To determine whether your product process operation produces specialty leather, you must meet the criteria in paragraphs (c)(1) and (2) of this section:

(1) The leather must be a select grade of chrome tanned, bark retanned, or fat liquored leather.

(2) The leather must be retanned through the application of greases, waxes, and oils in quantities greater than 25 percent of the dry leather weight. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products may include, but not limited to, specialty shoe leather and top grade football leathers.

§ 63.5355 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) You must collect data at all required intervals as specified in your plan for demonstrating compliance as specified at § 63.5325.

(c) For emission control devices, except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(d) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the compliance ratio, and, if an emission control device is used, in assessing the operation of the control device.

§ 63.5360 How do I demonstrate continuous compliance with the emission standards?

(a) You must demonstrate continuous compliance with the emission standards in § 63.5305 by following the requirements in paragraphs (a)(1) and (2) of this section:

(1) You must collect and monitor data according to the procedures in your plan for demonstrating compliance as specified in § 63.5325.

(2) If you use an emission control device, you must collect the monitoring data according to 40 CFR part 63, subpart SS.

(3) You must maintain your compliance ratio less than or equal to 1.00, as specified at § 63.5330.

(b) You must report each instance in which you did not meet the emission standards in § 63.5305. This includes periods of startup, shutdown, and malfunction. These deviations must be reported according to the requirements in § 63.5420(b).

(c) You must conduct the initial compliance demonstration before the compliance date that is specified for your source in § 63.5295.

Testing and Initial Compliance Requirements

§ 63.5375 When must I conduct a performance test or initial compliance demonstration?

You must conduct performance tests after the installation of any emission control device that reduces HAP emissions and can be used to comply with the HAP emission requirements of this subpart. You must complete your performance tests not later than 60 calendar days before the end of the 12-month period used in the initial compliance determination.

§ 63.5380 How do I conduct performance tests?

(a) Each performance test must be conducted according to the requirements in § 63.7(e) and the procedures of § 63.997(e)(1) and (2).

(b) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(c) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

§ 63.5385 How do I measure the quantity of finish applied to the leather?

(a) To determine the amount of finish applied to the leather, you must measure the mass, or density, and volume of each applied finish.

(b) Determine the mass of each applied finish with a scale calibrated to an accuracy of at least 5 percent of the amount measured. The quantity of all finishes used for finishing operations must be weighed or have a predetermined weight.

(c) Determine the density and volume of each applied finish according to the criteria listed in paragraphs (c)(1) through (3) of this section:

(1) Determine the density of each applied finish in pounds per gallon in accordance with § 63.5395. The finish density will be used to convert applied finish volumes from gallons into mass units of pounds.

(2) Volume measurements of each applied finish can be obtained with a flow measurement device. For each flow measurement device, you must perform the items listed in paragraphs (c)(2)(i) through (v) of this section:

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in or as close to a position that provides a representative flow.

(ii) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semiannually.

(v) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) Volume measurements of each applied finish can be obtained with a calibrated volumetric container with an accuracy of at least 5 percent of the amount measured.

§ 63.5390 How do I measure the HAP content of a finish?

(a) To determine the HAP content of a finish, the reference method is EPA Method 311 of appendix A of 40 CFR part 63. You may use EPA Method 311, an alternative method approved by the Administrator, or any other reasonable means for determining the HAP content. Other reasonable means of determining HAP content include, but are not limited to, a material safety data sheet (MSDS) or a manufacturer's hazardous air pollutant data sheet. If the HAP content is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest HAP value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or another approved method) to confirm the reported HAP content. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(b) You may use the weighted average of the HAP content analysis as determined in paragraph (a) of this section for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have a different HAP content.

§ 63.5395 How do I measure the density of a finish?

(a) To determine the density of a finish, the reference method is EPA Method 24 of appendix A of 40 CFR part 60. You may use EPA Method 24, an alternative method approved by the Administrator, or any other reasonable means for determining the density of a finish. Other reasonable means of determining density include, but are not

limited to, an MSDS or a manufacturer's hazardous air pollutant data sheet. If the density is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest density value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 24 (or another approved method) to confirm the reported density. However, if the results of an analysis by EPA Method 24 are different from the density determined by another means, the EPA Method 24 results will govern compliance determinations.

(b) You may use the weighted average of finish densities as determined in paragraph (a) of this section for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have different densities.

(c) Equation 1 of this section may be used to determine the weighted average of finish densities, as follows:

$$\text{Average Weighted Density} = \frac{\sum_{i=1}^{n} \text{Mass}_i * \text{Density}_i}{\sum_{i=1}^{n} \text{Mass}_i} \quad \text{(Eq. 1)}$$

Where:

Average Weighted Density = The average weighted density of applied finishes in pounds per gallon.
Mass = Pounds of finish "i" applied.
Density = The density of finish "i" in pounds per gallon.
n = Number of finish types applied.

§ 63.5400 How do I measure the quantity of leather processed?

(a) This section describes the information and procedures you must use to determine the quantity of leather processed at your affected source.

(1) To determine the surface area (i.e., quantity) of leather substrate processed each month at your source for each product process operation, follow the procedures in your plan for demonstrating compliance. You must consistently measure the surface area of processed leather substrate at one of the manufacturing locations listed in paragraph (a)(1)(i) or (ii) of this section:

(i) Measure the surface area of processed leather upon exiting the leather finishing operation.

(ii) Measure the surface area of processed leather upon shipment from the source.

(2) By the fifteenth of each month, you must determine the quantity of leather processed in 1,000's of square feet for each product process operation during the previous month. After collecting data on the amount of leather processed for 12 months, you must also determine by the fifteenth of each month the annual total of leather processed in 1,000's of square feet for each product process operation by summing the monthly quantities of leather processed in each product process operation for the previous 12 months. The "annual total of leather processed" in each product process operation is used in Equation 1 of § 63.5340 to calculate your allowable HAP loss as described in § 63.5340. Your allowable HAP loss is then subsequently used to calculate your compliance ratio as described in § 63.5330.

(b) To determine the surface area of leather processed at your source for each product process operation, you must use one of the methods listed in paragraphs (b)(1) and (2) of this section:

(1) Premeasured leather substrate sections being supplied by another manufacturer as an input to your finishing process.

(2) Measure the surface area of each piece of processed or shipped leather with a computer scanning system accurate to 0.1 square feet. The computer scanning system must be initially calibrated for minimum accuracy to the manufacturer's specifications. For similar leather production runs, use an average based on a minimum of 500 pieces of leather in lieu of individual measurements.

(c) Except as provided in paragraph (d) of this section, you must include the surface area of each piece of processed leather only once when determining the monthly quantity of leather processed, regardless of the number of times a piece of leather is reprocessed through a portion of the finishing operations.

(d) If a piece of leather is completely stripped of all applied finishes and reprocessed through the entire finishing operation as if it were a new piece of leather, you may recount the surface area of leather reprocessed when determining the monthly quantity of leather processed.

Notifications, Reports, and Records

§ 63.5415 What notifications must I submit and when?

(a) In accordance with §§ 63.7(b) and (c) and 63.9(b) and (h) of the General Provisions, you must submit the one-time notifications listed in paragraphs (b) through (g) of this section.

(b) As specified in § 63.9(b)(2), if you start up your affected source before February 27, 2002, you must submit an Initial Notification not later than June 27, 2002.

(c) In the Initial Notification, include the items in paragraphs (c)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Identification of the relevant standard, such as the Leather Finishing Operations NESHAP, and compliance date.

(4) A brief description of the source including the types of leather product process operations and nominal operating capacity.

(d) As specified in § 63.9(b)(1) and (2), if you startup your new or reconstructed affected source on or after February 27, 2002, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(e) If you are required to conduct a performance test, you must submit a Notification of Intent to Conduct a Performance Test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(f) You must submit a Notification of Compliance Status report not later than 60 calendar days after determining your initial 12-month compliance ratio. The notification of compliance status must contain the items in paragraphs (f)(1) through (5) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the previous 12 months.

(4) Each HAP identified under § 63.5390 in finishes applied during the 12-month period used for the initial compliance determination.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period used for the initial source compliance determination. This certification must include the items in paragraphs (f)(5)(i) through (iii) of this section:

(i) The plan for demonstrating compliance, as described in § 63.5325, is complete and available on site for inspection.

(ii) You are following the procedures described in the plan for demonstrating compliance.

(iii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(g) If your source becomes a major source on or after February 27, 2002, you must submit an initial notification not later than 120 days after you become subject to this subpart.

§ 63.5420 What reports must I submit and when?

(a) You must submit the first annual compliance status certification 12 months after you submit the Notification of Compliance Status. Each subsequent annual compliance status certification is due 12 months after the previous annual compliance status certification. The annual compliance status certification provides the compliance status for each month during the 12-month period ending 60 days prior to the date on which the report is due. Include the information in paragraphs (a)(1) through (5) of this section in the annual certification:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) Each HAP identified under § 63.5390, in finishes applied during the 12-month period covered by the report.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period covered by the report. This certification must include the items in paragraphs (a)(5)(i) and (ii) of this section:

(i) You are following the procedures described in the plan for demonstrating compliance.

(ii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(b) You must submit a Deviation Notification Report for each compliance determination you make in which the compliance ratio exceeds 1.00, as determined under § 63.5330. Submit the deviation report by the fifteenth of the following month in which you determined the deviation from the compliance ratio. The Deviation Notification Report must include the items in paragraphs (b)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the responsible agency of these NESHAP does not object.

§ 63.5425 When must I start recordkeeping to determine my compliance ratio?

(a) If you have a new or reconstructed affected source, you must start recordkeeping to determine your compliance ratio according to one of the schedules listed in paragraphs (a)(1) and (2) of this section:

(1) If the startup of your new or reconstructed affected source is before February 27, 2002, then you must start recordkeeping to determine your compliance ratio no later than February 27, 2002.

(2) If the startup of your new or reconstructed affected source is after February 27, 2002, then you must start recordkeeping to determine your compliance ratio upon startup of your affected source.

(b) If you have an existing affected source, you must start recordkeeping to determine your compliance ratio no later than February 27, 2004.

(c) If you have a source that becomes a major source of HAP emissions after February 27, 2002, then you must start recordkeeping to determine your compliance ratio immediately upon submitting your Initial Notification, as required at § 63.5415(g).

§ 63.5430 What records must I keep?

You must satisfy the recordkeeping requirements in paragraphs (a) through (g) of this section by the compliance date specified in § 63.5295.

(a) You must keep the plan for demonstrating compliance as required at § 63.5325 onsite and readily available as long as the source is operational. If you make any changes to the plan for demonstrating compliance, then you must keep all previous versions of the plan and make them readily available for inspection for at least 5 years after each revision.

(b) You must keep a copy of each notification and report that you are required to submit in accordance with this subpart.

(c) You must keep records of performance tests in accordance with this subpart.

(d) You must record and maintain a continuous log of finish usage as specified at § 63.5335(b).

(e) You must maintain all necessary records to document the methods you used and the results of all HAP content measurements of each applied finish.

(f) For each leather product process operation, you must maintain a monthly log of the items listed in paragraphs (f)(1) and (2) of this section:

(1) Dates for each leather product process operation.

(2) Total surface area of leather processed for each leather product process operation.

(g) If you use an emission control device, you must keep records of monitoring data as specified at subpart SS of this part.

§ 63.5435 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.5450 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.5455 Who administers this subpart?

(a) This subpart can be administered by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to

your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if the authority to implement and enforce this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the emission standards in § 63.5305 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.5460 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Compliance ratio means the ratio of the actual HAP loss from the previous 12 months to the allowable HAP loss from the previous 12 months. Equation 1 in § 63.5330 is used to calculate this value. If the value is less than or equal to 1.00, the source is in compliance. If the value is greater than 1.00, the source is deviating from compliance.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limits or work practice standards.

(2) Fails to meet any emission limits, operating limits, or work practice standards in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Drying means the process of removing all but equilibrium moisture from the leather. Drying methods currently in use include: toggling, hanging, pasting, and vacuum drying.

Finish add-on means the amount of solid material deposited on the leather substrate due to finishing operations. Typically, the solid deposition is a dye or other chemical used to enhance the color and performance of the leather. Finish add-on is quantified as mass per surface area of substrate, such as grams of finish add-on per square foot of leather substrate.

Hazardous air pollutants (HAP) means any substance or mixture of substances listed as a hazardous air pollutant under section 112(b) of the Clean Air Act.

Leather means the pelt or hide of an animal which has been transformed by a tanning process into a nonputrescible and useful material.

Leather finishing means a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers.

Leather substrate means a nonputrescible leather surface intended for the application of finishing chemicals and materials. The leather substrate may be a continuous piece of material such as side leather or may be a combination of smaller leather pieces and leather fibers, which when joined together, form a integral composite leather material.

Leather tanning means the processes, commonly referred to as wet operations, used to purify and stabilize the collagen content of the hide. Wet operations are divided into three phases, the beamhouse (includes soaking and unhairing); the tanyard (includes bating, pickling, tanning, trimming/siding, and splitting); and the coloring department (includes retanning, coloring, and atliquoring operations).

Month means that all references to a month in this subpart refer to a calendar month.

Nonwater-resistant leather means nonupholstery leather that is not treated with any type of waterproof finish and, thus, cannot withstand 5,000 Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is typically used for dress shoes, handbags, and garments.

Product process operation means any one of the four leather production classifications developed for ease of compliance with this subpart. The four leather product process operations are as follows: upholstery leather with greater than or equal to 4 grams finish add-on per square foot, upholstery leather with less than 4 grams finish add-on per square foot, water-resistant/specialty leather, and nonwater-resistant leather.

Specialty leather means a select grade of chrome tanned, bark retanned, or fat liquored leather that is retanned through the application of greases, waxes, and oils in quantities greater than 25 percent of the dry leather weight. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products are generally low volume, high-quality leather, such as specialty shoe leather and top grade football leathers.

Upholstery leather (greater than or equal to 4 grams finish add-on per square foot) means an upholstery leather with a final finish add-on to leather ratio of 4 or more grams of finish per square foot of leather. These types of finishes are used primarily for automobile seating covers. These finishes tend to be aqueous-based.

Upholstery leather (less than 4 grams finish add-on per square foot) means an upholstery leather with a final finish add-on to leather ratio of less than 4 grams of finish per square foot of leather. These types of finishes are typically used for furniture seating covers. The finishes tend to be solvent-based and leave a thinner, softer, and more natural leather texture.

Water-resistant leather means nonupholstery leather that has been treated with one or more waterproof finishes such that the leather can withstand 5,000 or more Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is used for outerwear, boots and outdoor applications.

Figure to Subpart TTTT of Part 63

Figure 1 to Subpart TTTT of Part 63—Example Logs for Recording Leather Finish Use and HAP Content

Month:_____
Year:_____

FINISH INVENTORY LOG

Finish type	Finish usage (pounds)	HAP Content (mass fraction)	Date and time	Operator's name	Product process operation

MONTHLY SUMMARY OF FINISH USAGE

	Upholstery leather (≥4 grams)	Upholstery leather (<4 grams)	Water-resistant/ specialty leather	Nonwater-resistant leather
Number of Entries				
Total Finish Usage (pounds)				
Total HAP Usage (pounds)				

Tables to Subpart TTTT of Part 63

As required in §§ 63.5305 and 63.5340(b), you must meet the appropriate emission limits in the following table:

TABLE 1 TO SUBPART TTTT OF PART 63—LEATHER FINISHING HAP EMISSION LIMITS FOR DETERMINING THE ALLOWABLE HAP LOSS

Type of Leather Product Process Operation	HAP Emission Limit (pounds of HAP loss per 1,000 square feet of leather processed)	
	Existing sources	New sources
1. Upholstery Leather (≥4 grams add-on/square feet)	2.6	0.5
2. Upholstery Leather (<4 grams add-on/square feet)	6.8	2.5
3. Water-resistant (≥5,000 Maeser Flexes)/Specialty Leather	5.6	4.9
4. Nonwater-resistant Leather (<5,000 Maeser Flexes)	3.7	2.1

As required in § 63.5450, you must meet the appropriate NESHAP General Provision requirements in the following table:

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes	
§ 63.2	Definitions	Definitions for Part 63 standards	Yes	Except as specifically provided in this subpart.
§ 63.3	Units and abbreviations	Units and abbreviations for Part 63 standards.	Yes	
§ 63.4	Prohibited activities and circumvention.	Prohibited activities; compliance date; circumvention, severability.	Yes	
§ 63.5	Construction/reconstruction.	Applicability; applications; approvals.	Yes	Except for paragraphs of § 63.5 as listed below.
§ 63.5(c)	[Reserved]			
§ 63.5(d)(1)(ii)(H)	Application for approval	Type and quantity of HAP, operating parameters.	No	All sources emit HAP. Subpart TTTT does not require control from specific emission points.
§ 63.5(d)(1)(i)	[Reserved]			

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§63.5(d)(1)(iii), (d)(2), (d)(3)(ii)		Application for approval	No	The requirements of the application for approval for new and reconstructed sources are described in §63.5320(b). General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart TTTT requirements for quantifying solvent destroyed by an add-on control device would be applicable.
§63.6	Applicability of general provisions.	Applicability of general provisions	Yes	Except for paragraphs of §63.6 as listed below.
§63.6(b)(1)–(3)	Compliance dates, new and reconstructed sources.		No	Section §63.5283 specifies the compliance dates for new and reconstructed sources.
§63.6(b)(6)	[Reserved]			
§63.6(c)(3)–(4)	[Reserved]			
§63.6(d)	[Reserved]			
§63.6(e)	Operation and maintenance requirements.		Yes	Except for subordinate paragraphs of §63.6(e) as listed below.
§63.6(e)(3)	Operation and maintenance requirements.	Startup, shutdown, and malfunction plan requirements.	No	Subpart TTTT does not have any startup, shutdown, and malfunction plan requirements.
§63.6(f)–(g)	Compliance with nonopacity emission standards except during SSM.	Comply with emission standards at all times except during SSM.	No	Subpart TTTT does not have nonopacity requirements.
§63.6(h)	Opacity/visible emission (VE) standards.		No	Subpart TTTT has no opacity or visual emission standards.
§63.6(i)	Compliance extension	Procedures and criteria for responsible agency to grant compliance extension.	Yes	
§63.6(j)	Presidential compliance exemption.	President may exempt source category from requirement to comply with subpart.	Yes	
§63.7	Performance testing requirements.	Schedule, conditions, notifications and procedures.	Yes	Except for paragraphs of §63.7 as listed below. Subpart TTTT requires performance testing only if the source applies additional control that destroys solvent. §63.5311 requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
§63.7(a)(2) (i) and (iii)	Performance testing requirements.	Applicability and performance dates.	No	§63.5310(a) of subpart TTTT specifies the requirements of performance testing dates for new and existing sources.
§63.8	Monitoring requirements		No	Subpart TTTT does not require monitoring other than as specified therein.
§63.9	Notification requirements	Applicability and State delegation	Yes	Except for paragraphs of §63.9 as listed below.
§63.9(e)	Notification of performance test.	Notify responsible agency 60 days ahead.	Yes	Applies only if performance testing is performed.

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§63.9(f)	Notification of VE/opacity observations.	Notify responsible agency 30 days ahead.	No	Subpart TTTT has no opacity or visual emission standards.
§63.9(g)	Additional notifications when using a continuous monitoring system (CMS).	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	No	Subpart TTTT has no CMS requirements.
§63.9(h)	Notification of compliance status.	Contents	No	§63.5320(d) specifies requirements for the notification of compliance status.
§63.10	Recordkeeping/reporting	Schedule for reporting, record storage.	Yes	Except for paragraphs of §63.10 as listed below.
§63.10(b)(2)	Recordkeeping	Record startup, shutdown, and malfunction events.	No	Subpart TTTT has no recordkeeping requirements for startup, shutdown, and malfunction events.
§63.10(c)	Recordkeeping	Additional CMS recordkeeping	No	Subpart TTTT does not require CMS.
§63.10(d)(2)	Reporting	Reporting performance test results.	Yes	Applies only if performance testing is performed.
§63.10(d)(3)	Reporting	Reporting opacity or VE observations.	No	Subpart TTTT has no opacity or visible emission standards.
§63.10(d)(4)	Reporting	Progress reports	Yes	Applies if a condition of compliance extension.
§63.10(d)(5)	Reporting	Startup, shutdown, and malfunction reporting.	No	Subpart TTTT has no startup, shutdown, and malfunction reporting requirements.
§63.10(e)	Reporting	Additional CMS reports	No	Subpart TTTT does not require CMS.
§63.11	Control device requirements.	Requirements for flares	Yes	Applies only if your source uses a flare to control solvent emissions. Subpart TTTT does not require flares.
§63.12	State authority and delegations.	State authority to enforce standards.	Yes	
§63.13	State/regional addresses	Addresses where reports, notifications, and requests are sent.	Yes	
§63.14	Incorporation by reference.	Test methods incorporated by reference.	Yes	
§63.15	Availability of information and confidentiality.	Public and confidential information.	Yes	

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Federal Register

Wednesday,
February 27, 2002

Part VIII

Environmental Protection Agency

Announcement of Availability and Request for Comment on "Completion of Corrective Action Activities at RCRA Facilities" Guidance; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7150–4]

Announcement of Availability and Request for Comment on "Completion of Corrective Action Activities at RCRA Facilities" Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide the "Completion of Corrective Action Activities at RCRA Facilities" draft guidance memorandum for public comment. By inviting comment, the Agency hopes to involve the States, the regulated community, members of the public, and other stakeholders in the development of this guidance.

DATES: Comments may be submitted until April 29, 2002.

ADDRESSES: Commenters should send an original and two copies of their comments, referencing docket number F–2002–CC2A–FFFFF. If using regular U.S. Postal Service mail to: RCRA Docket Information Center, U.S. Environmental Protection Agency Headquarters (EPA HQ), Office of Solid Waste, Ariel Rios Building (5305G), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002. If using special delivery such as overnight express service send to: RCRA Docket Information Center (RIC), Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Hand deliveries of comments should be made to the Arlington, VA address above. Comments also may be submitted electronically through the internet to: *rcra-docket@epa.gov*. Comments in electronic format must also reference the docket number F–2002–CC2A–FFFFF. Electronic comments should be submitted as an ASCII file and should avoid the use of special characters and any form of encryption.

Confidential business information (CBI) should not be submitted electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste, U.S. EPA, Ariel Rios Building (5303W), 1200 Pennsylvania Avenue NW, Washington DC 20460–0002.

Any public comment received by the Agency and supporting materials will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, you should make an appointment by calling 703–603–9230. A maximum of 100 pages may be copied from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically. *See* the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice for information on accessing the index and these supporting materials.

The Agency is posting this document on the Corrective Action website: *http://www.epa.gov/correctiveaction*. If you would like to receive a hard copy, please call the RCRA Hotline at 800–424–0346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of the draft guidance document, contact Barbara Foster, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–7057), (*foster.barbara@epa.gov*).

SUPPLEMENTARY INFORMATION: The draft guidance document, which is published below, also will be available on the Internet at: *http://www.epa.gov/correctiveaction*. When issued in final form, this guidance will be issued as a memorandum from EPA headquarters to the Regional offices, and it is published below in that format for comment.

EPA developed this memorandum to identify two situations during the RCRA corrective action process where the Agency believes it generally is appropriate to make completion determinations, and to provide guidance to EPA and State regulators in making those determinations. By recognizing completion of corrective action activities, the agency can inform the owner or operator that RCRA corrective action activities are complete at the facility. This information can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use.

On October 2, 2001, EPA published a notice in the **Federal Register** requesting comment on a draft guidance document entitled "Recognizing Completion of Corrective Action Activities at RCRA Facilities" (*see* 66 FR 50195). Comments received by the Agency on that draft guidance largely supported the content, but expressed concern that the Agency needed to expand the scope of the guidance, for example, to address when and under what circumstances such decisions should be made. The draft memorandum published below addresses these comments by combining the content of the October 2 draft guidance with new guidance concerning additional issues related to completion of corrective action. It is important to note, however, that this draft guidance does not address all issues suggested by commenters. For example, this guidance does not include detailed discussion of institutional controls or financial assurance. The Agency will continue to look at these and other issues surrounding completion of corrective action.

In this **Federal Register** notice, the Agency again solicits comment on issues related to completion of corrective action. The Agency requests comment on the guidance in general and, in addition, requests comment on specific issues. The specific issues on which the Agency solicits comment are identified in footnotes throughout the guidance document, and are as follows:

1. Terminology the Agency might use to describe the Completion of Corrective Action Determinations (*see* footnote 12 and related discussion).

2. Mechanisms, other than permits and orders, that might be used to implement institutional controls following a Corrective Action Complete with Controls decision and under what circumstances those mechanisms would provide enough certainty with respect to continued compliance with required controls to justify elimination of the permit or order (*see* footnote 13 and related discussion).

3. Situations where a permit or order could be eliminated because no additional action is required on the part of the regulatory agency or facility owner or operator to implement the remaining controls (*see* footnote 14 and related discussion).

The official record for this notice will be kept in paper form. Accordingly, we will transfer all comment and input received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center. EPA will review and consider all comments.

Dated: February 12, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

Memorandum

Subject: Guidance on Completion of Corrective Action Activities at RCRA Facilities

From: OSWER; OECA

To: RCRA Division Directors, Regions I–X; Enforcement Division Directors, Regions I–X; Regional Counsel

Introduction

This memorandum provides guidance to the Regions and authorized States on acknowledging completion of corrective action activities at RCRA treatment, storage, and disposal facilities. It describes two types of completion determinations—"Corrective Action Complete" and "Corrective Action Complete with Controls." It provides guidance on when each type of completion determination should be made. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on the procedures EPA and the authorized States should follow when making completion determinations.[1]

Background

EPA recognizes the importance of an official acknowledgment that corrective action activities have been completed. An official completion determination, made through appropriate procedures, benefits the owner or operator of a facility, the regulatory agency implementing the corrective action program, and the public. Official recognition that corrective action activities are complete can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use. Further, once the regulatory agency implementing corrective action makes a determination that corrective action activities are complete, it can modify its workload universes, and focus agency resources on other facilities. Finally, because completion determinations should be made through a process that provides adequate public involvement, the process of making a formal completion determination assures the public an opportunity to review and comment on the cleanup activities, and to pursue available administrative and judicial challenges to the agency's decision.[2]

Under 40 CFR section 264.101, owners and operators seeking a permit for the treatment, storage or disposal of hazardous waste must conduct corrective action "as necessary to protect human health and the environment."[3] The ultimate goal of corrective action is to satisfy the "protection of human health and the environment" standard. Thus, a determination by EPA that corrective action activities are complete is, in effect, an announcement that "protection of human health and the environment" has been achieved.[4]

With experience, the Agency has discovered that the universe of facilities subject to corrective action requirements includes facilities that vary widely in complexity, extent of contamination, and level of risk presented at the site. To address this wide variation among corrective action facilities, the Agency has developed multiple approaches to achieving "protection of human health and the environment."

When conducting corrective action, however, one of the key distinctions among remedies is the extent to which they rely upon controls (engineering and/or institutional[5]) to ensure that they remain protective. In some cases, the Agency selects a remedy that requires treatment and/or removal of waste and all contaminated media to levels that return the facility to unrestricted use.[6] At these facilities, no additional oversight or activity is required following cleanup. When implementation of the remedy is completed successfully, protection of human health and the environment is achieved.

In other cases, the Agency selects a remedy that allows contamination to remain on site, but imposes ongoing obligations concerning, for example, operation and maintenance of physical waste controls (*e.g.*, a cap), and compliance with institutional controls (e.g., an industrial land use restriction). Thus, in these situations, the goal of "protection of human health and the environment" often is achieved by imposing a remedy that allows some contamination to remain in place, but requires controls (engineering and/or institutional) at the facility to limit exposure and subsequent release of contamination that remains following cleanup. At such facilities, successful implementation of the remedy alone is not enough to ensure protection of human health and the environment. Following remediation, maintenance of controls and continued corrective action related activities (such as monitoring) at such facilities are fundamental elements of meeting the standard of "protection of human health and the environment."[7]

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[1] This document provides guidance to EPA Regional and State corrective action authorities, as well as to facility owner or operators and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern RCRA corrective action.

The RCRA statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the applicable statutes and regulations. Therefore, interested parties are free to raise questions and objections about the substance of this guidance, appropriateness of the application of this guidance to a particular situation. EPA will, and States should, consider whether or not the recommendations or interpretations in the guidance are appropriate in that situation. EPA welcomes public comment on this document at any time, and will consider those comments in any future revision of this guidance document.

[2] The Agency anticipates that at facilities where meaningful public involvement begins early in the corrective action process, challenges are less likely at the end of the process.

[3] Likewise, section 3008(h) establishes a standard of "protection of human health and the environment" for corrective action imposed through orders. The policies established in this guidance are equally applicable to facilities that address facility-wide corrective action through a section 3008(h) order, rather than a permit.

[4] Note that for facilities that continue to require a permit for the treatment, storage, or disposal of hazardous waste, a completion determination in no way affects the ongoing requirement to conduct corrective action for any future releases at the facility.

[5] EPA has defined institutional controls as "non-engineered instruments such as administrative and/or legal controls that minimize the potential for human exposure to contamination by limiting land or resource use." They are almost always used in conjunction with, or as a supplement to, other measures such as waste treatment or containment. There are four general categories of institutional controls: governmental controls; proprietary controls; enforcement tools; and informational devices. (See Fact Sheet entitled "Institutional Controls: A Site Managers Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September, 2000, OSWER Directive 9355.0–74FS–P).

[6] "Unrestricted use" refers to a walk-away situation, where no further activity or controls are necessary to protect human health and the environment at the site. Generally, a cleanup of soil to residential standards and of groundwater to drinking water standards would be an example of an unrestricted use scenario. By comparison, a cleanup of soil to industrial soil levels and/or groundwater to levels in excess of drinking water standards usually would not be an unrestricted use scenario. Under both scenarios, the Agency does not anticipate having to impose additional corrective action requirements because the remedy is protective of human health and the environment. The difference is that, under the second scenario, protection of human health and the environment is dependent on the maintenance of the remedy, including institutional controls.

[7] It should be noted that, at these facilities, cleanup to unrestricted use levels and a Corrective

Continued

An example of a situation where the Agency typically chooses a remedy that relies on controls is a facility for which the reasonably foreseeable use is industrial.[8] At those facilities, the Agency may offer the facility the option to achieve protection of human health and the environment by selecting a remedy that allows higher levels of contamination to remain at the site, but requires the use of other controls to prevent unanticipated exposure. As described above, protection of human health and the environment at the facility typically is dependent on maintenance of controls.

Types of Completion Determinations

As was discussed above, a determination by EPA that corrective action activities are complete is a statement by the Agency that protection of human health and the environment has been achieved at a facility. As also was discussed above, the Agency takes different approaches to achieving protection of human health and the environment at facilities, depending on the site-specific circumstances. Completion determinations benefit the owner or operator, the community, and the regulatory agency. Therefore, EPA recommends that regulators implementing the corrective action program make completion determinations where corrective action activities have resulted in protection of human health and the environment at a facility. EPA plans to recognize two types of completion determinations, when properly made by the Agency or an authorized State, using appropriate procedures—Corrective Action Complete, and Corrective Action Complete with Controls. These two types of completion determinations, and recommended procedures for making them, are described below.

1. Corrective Action Complete Determination

EPA or the authorized State should make a determination that Corrective Action is Complete where the facility owner or operator has satisfied all obligations under sections 3004(u) and (v).[9] This determination generally indicates that either there was no need for corrective action at the facility or, where corrective action was necessary, the remedy has been implemented successfully,[10] and no further activity or controls are necessary to protect human health and the environment.

In a situation where EPA or the authorized State makes a determination that Corrective Action is Complete, no additional activity is required on the part of the regulatory agency or the owner or operator to maintain protection of human health and the environment. No controls are necessary at the facility to maintain protection of human health and the environment. Thus, the corrective action requirements can be eliminated. The facility should be eligible for release from financial assurance, as no funds should be needed in the future for corrective action-related activities. In addition, when there no longer are RCRA-regulated activities at the facility, the regulatory agency should have no concerns associated with transfer of the property, nor any reason to want to be informed of, or take an action regarding, that transfer.[11]

2. Corrective Action Complete with Controls Determination [12]

EPA or the authorized State should make a Corrective Action Complete with Controls determination at a facility where: (1) A full set of corrective measures has been defined; (2) the facility has completed construction and installation of all required remedial actions; (3) site-specific media cleanup objectives have been met, which reflect current and reasonably expected future land use and maximum beneficial groundwater use, and (4) all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and implementation of any institutional controls. A Corrective Action Complete with Controls determination provides the owner or operator with recognition that protection of human health has been achieved, and will continue as long as the required operation and maintenance actions are performed, and the institutional controls are maintained. A Corrective Action Complete with Controls determination provides an owner or operator with recognition of the significant progress made at the facility, and of the resulting reduction in risk.

EPA or the authorized State generally should maintain a permit or order at the facility following a Corrective Action Complete with Controls determination. Continuation of the permit or order assures periodic review by the regulatory agency, compliance with any operation and maintenance requirements and institutional controls, and notification to the regulatory agency of transfers of the facility (which will allow opportunity for the agency to assure compliance with corrective action requirements will continue at the site).[13] At facilities where long-term

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Action Complete determination (see discussion below) ultimately could be achieved if the owner or operator conducted additional cleanup and returned the facility to unrestricted use, or if the facility otherwise reached that state (e.g., through natural attenuation). At that time, the Agency could discontinue the requirement for controls.

[8] See Land Use in the CERCLA Remedy Selection Process, May 25, 1995, OSWER Directive 9355.7–04 for discussion of reasonably foreseeable land use.

[9] Or the owner or operator has completed facility-wide corrective action, as necessary to protect human health and the environment, imposed through a section 3008(h) order.

[10] See (61 FR 19432, at 19453, May 1, 1996), and (55 FR 30798, at 30837, July 27, 1990) for guidance regarding completion of remedy.

[11] In September, 2001, EPA issued a guidance entitled *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action* (The Groundwater Handbook). Unlike this draft Completion Guidance, which discusses completion of corrective action for all media, the Groundwater Handbook discusses completion of corrective action for groundwater remedies. It recognizes three "phases" of completion for groundwater remedies: (1) Implementing the final remedy, (2) achieving final cleanup goals, and (3) fulfilling all cleanup obligations associated with the contaminated groundwater, including long-term monitoring.

This draft Completion Guidance is not intended to modify the Agency's guidance in the Groundwater Handbook on completion for groundwater remedies—rather, it goes beyond the scope of that guidance in that it addresses additional subjects and adds detail. Under this draft Completion Guidance, a Corrective Action Complete determination would be appropriate when: (1) the third phase of completion of the groundwater remedy has been achieved (as described in the Groundwater Handbook), and no controls are necessary to protect human health and the environment, and (2) the land has been returned to unrestricted use. A description of achieving final cleanup goals can be found in the September 2001 Groundwater Handbook (*See id.*, Section 15).

[12] EPA seeks to use terminology that is precise, clear in meaning and, to the extent possible, consistent with Superfund. EPA welcomes commenters' suggestions on terminology that may be more accurate and/or less cumbersome than "Corrective Action Complete with Controls" to describe this determination.

[13] In the September 2000 Fact Sheet on Institutional Controls (*id.*), EPA identified an array of institutional controls that regulators can use to ensure continued protection of human health and the environment at RCRA corrective action facilities. These include governmental controls, proprietary controls, enforcement and permit tools with institutional control components, and informational devices.

The September 2000 Fact Sheet discusses that, under RCRA, institutional controls typically are imposed through permit conditions, or through orders issued under section 3008(h). The Fact Sheet cautions the regulator that those mechanisms might have shortcomings, and suggests that the regulator conduct a thorough evaluation to ensure its ability to enforce the institutional control through the permit or order mechanism.

The Agency solicits comment on mechanisms, other than permits and orders, in particular, those that are enforceable by EPA and the authorized States, that might be used to implement institutional controls following a Corrective Action Complete with Controls determination. The Agency further solicits comment on whether and under what circumstances such mechanisms (and any other mechanisms that might be used to implement other types of controls, such as operation and maintenance, in the absence of a permit or order)

institutional controls are necessary to ensure continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional controls. In addition, where necessary, financial assurance should be maintained at facilities following a Corrective Action Complete with Controls determination.

The Agency believes that a situation can arise where the Agency can support elimination of the permit or order at a facility that has not been returned to unrestricted use. This situation would occur at a facility where, following completion of the remedy, controls (engineering and/or institutional) are necessary to assure continued protection of human health and the environment, but those controls do not require action on the part of the regulatory agency or the facility owner or operator. EPA continues to consider permit or order termination in such situations, on a case-by-case basis, as they arise.[14]

It should be noted that, at some point, many facilities that obtain a Corrective Action Complete with Controls determination will be eligible to obtain a Corrective Action Complete determination. For example, the owner or operator at a facility cleaned up to industrial levels could conduct additional cleanup to unrestricted use levels (i.e., a point where monitoring and/or restrictions on use no longer are necessary). At that point it would be appropriate to eliminate the permit or order, and release the facility from financial assurance, so long as there are no additional RCRA activities at the facility subject to permit requirements.

Completion Determinations for a Portion of a Facility

Regulators implementing the corrective action program often develop a number of distinct and separate remedies to address different areas of a facility or different media. This approach may be necessary because a facility may include areas and media that present a range of environmental risks. For example, an industrial facility may include areas that may never have been used for industrial purposes or have never been otherwise contaminated. Alternatively, a facility may have contaminated groundwater undergoing corrective action years after the source of contamination has been removed, and the soil cleaned up to unrestricted use levels.

To ensure that a range of appropriate cleanup and land use options are available to the facility owner or operator, the Agency, where appropriate, on a facility-specific basis, will consider the option to subdivide a facility for purposes of corrective action. In these situations, the Agency will select a cleanup approach based on unrestricted use at parts of the facility, while cleanup at other parts of the facility will be based on the restricted use assumptions and will rely on institutional and/or engineering controls to maintain the protectiveness of the corrective action.

Under this approach, a Corrective Action Complete determination could be made for the portion of a facility returned to unrestricted use. A Corrective Action Complete with Controls determination could be made for the remaining portion of the facility, and the controls generally implemented under a permit or order.

In some situations, following a Corrective Action Complete determination for a portion of a facility, the owner will sell the portion that no longer is subject to corrective action. In these situations, the regulator making the determination should consider the long-term plan for the facility, and the effect of the Corrective Action Complete determination on financial assurance. The regulator should take steps to ensure adequate financial assurance is available to address corrective action obligations at the remainder of the facility.

Procedures for Acknowledging Completion Determinations

EPA will recognize completion determinations made by the appropriate authority (EPA or the authorized State implementing the corrective action program), and made through proper procedures. By following appropriate procedures, the authorized agency can make a sound, well informed completion determination. The proper procedures for acknowledging a completion determination will depend on the status of the facility (permitted or non-permitted), and on whether the determination applies to part of the facility or to the entire facility. The following section describes procedures that the Agency believes generally are appropriate for completion determinations.[15]

1. Corrective Action Complete Determinations for Entire Facility

The regulations in 40 CFR that govern the RCRA program do not provide explicit procedures for recognizing completion of corrective action activities, so regulators have considerable flexibility in developing procedures for making completion determinations. The regulatory agency implementing the corrective action program in that State (i.e., the authorized State program or, in unauthorized States, EPA) should ensure that a completion determination has been made through appropriate procedures. Providing meaningful opportunities for public participation in the decisionmaking process should be a crucial component of a completion determination procedure. The Agency believes that the following, generally, are appropriate procedures for making Completion of Corrective Action determinations.[16]

At permitted facilities, the agency (EPA or the authorized States) should modify the permit to reflect the agency's determination that corrective action is complete. The current regulations in 40 CFR section 270.42 provide procedural requirements for facility requested permit modifications. In most cases, completion of corrective action will be a Class 3 permit modification, and the agency should follow those procedures (or authorized State equivalent), including the procedures for public involvement.[17] In cases where no other permit conditions remain, the permit could be modified not only to reflect the

generally would provide enough certainty, with respect to continued compliance with required controls, to justify elimination of the permit or order.

[14] The Agency solicits comment on this issue, and particularly solicits examples of where there is no need for further action on the part of the Agency or owner/operator to assure that remaining corrective action requirements are satisfied.

[15] EPA notes that, whether at a permitted or non-permitted facility and regardless of the completion determination procedure used, if EPA or the authorized State discovers unreported or misrepresented releases subsequent to the completion determination, then EPA and the authorized State may conclude that additional cleanup is needed. And, of course, if EPA subsequently discovers a situation that may present an imminent and substantial endangerment to human health or the environment, EPA may elect to use its RCRA section 7003 imminent and substantial endangerment authority, or other applicable authorities, to require additional work at the facility.

[16] Of course, if a facility's permit provides otherwise, these procedures would not be appropriate at that facility.

[17] It should be noted that the Agency suggests Class 3 permit modification procedures as a general rule for completion determinations. However, Class 3 procedures might not be necessary or appropriate in all circumstances. For example, where the regulatory agency has made extensive efforts throughout the corrective action process to involve the public and has received little or no interest, and the environmental problems at the facility were limited, more tailored public participation may be appropriate.

completion determination, but also to change the expiration date of the permit to allow earlier permit expiration (see 40 CFR section 270.42 (Appendix I(A)(6)).

At non-permitted facilities where facility-wide corrective action is complete, and all other RCRA obligations at the facility have been satisfied, EPA or the authorized State may acknowledge completion of corrective action by terminating interim status through final administrative disposition of the facility's permit application (*see* 40 CFR section 270.73(a)). To do so, the permitting authority at the facility (EPA or the authorized State or both, depending on the authorization status of the State) should process a final decision following the procedures for permit denial in 40 CFR part 124, or authorized equivalent.[18]

EPA recognizes that referring to this decision as a "permit denial" may be confusing to the public and problematic to the facility when the facility is in compliance, is not seeking a permit, and does not have an active permit "application." Therefore, regulatory agencies may choose to use alternate terminology (e.g., a "no permit necessary determination") to refer to this decision, though it is issued through the permit denial process or authorized equivalent. Regardless of the terminology used, the basis for the decision should be stated clearly, generally that: (1) There are no ongoing treatment, storage, or disposal activities that require a permit; (2) all closure and post-closure requirements applicable at the regulated units have been fulfilled; and (3) all corrective action obligations, including long-term monitoring, have been met.

EPA and the authorized States may develop procedures for recognizing completion of corrective action at non-permitted facilities other than the permit decision process described above. For example, a regulatory agency may have procedures for issuing a notice informing the facility and the public that the facility has met its corrective action obligations, rather than issuing a final permit decision. EPA believes the alternative procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by EPA's 40 CFR part 124 requirements (or the authorized State equivalent). Owners and operators should be aware that informal communications regarding the current status of cleanup activities at the site are not the same as completion determinations.[19]

2. Corrective Action Complete With Controls Determinations

To recognize a determination that Corrective Action with Controls is complete, the procedures that regulatory agencies should follow should be determined by the regulatory status of the facility. For permitted facilities, the regulatory agency should modify the permit to reflect the decision, following the procedures in 40 CFR section 270.42. For non-permitted facilities, the agency should follow alternate procedures (*e.g.*, issue a notice with an opportunity to comment) that provide procedural protections equivalent to, although not necessarily identical to, those required by part 124 requirements (or the authorized State equivalent). Interim status should not be terminated at a RCRA facility where corrective action requirements remain. If corrective action was implemented through an order, the regulator should not eliminate the order until the facility meets all corrective action obligations required under the order.

As was discussed above, at facilities (permitted or non-permitted) where a Corrective Action Complete with Controls determination is made, and long-term institutional controls are necessary to continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional control.

It should be noted that a facility for which a Corrective Action Complete with Controls determination has been made might later be returned to unrestricted use (*e.g.*, the owner or operator conducts additional cleanup). At that point, the regulatory agency should acknowledge the Corrective Action Complete determination through appropriate procedures.

3. Corrective Action Complete Determinations for Less Than the Entire Facility

As was discussed above, EPA or the authorized State could make a Corrective Action Complete determination for a portion of a facility and a Corrective Action Complete with Controls determination at the remaining portion. Where the regulatory agency determines that a Corrective Action Complete decision is appropriate for a portion of the facility, it should acknowledge that decision using procedures that will not affect portions of the facility where corrective action requirements remain.

For example, at a permitted facility, the agency should acknowledge Corrective Action Completion for a portion of the facility by modifying the permit following the procedures in 40 CFR 270.42. The agency should not eliminate the permit, however, because corrective action responsibilities (and possibly other RCRA responsibilities) remain at the facility.

At non-permitted facilities, the Agency or authorized State should utilize alternate procedures as described above (e.g., issue a notice) to acknowledge the Corrective Action Completion determination for a portion of the facility. Those procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent). However, interim status generally should not be terminated at a facility where RCRA obligations remain. If the corrective action was implemented through an order, the regulator should not eliminate the order or terminate interim status until the facility satisfies all corrective action obligations.

FOR FURTHER INFORMATION CONTACT: For further information on completion of corrective action, please contact Barbara Foster at 703–308–7057 or Jim McCleary at 202–564–6289.

[FR Doc. 02–4647 Filed 2–26–02; 8:45 am]
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[18] Under EPA permit denial procedures in 40 CFR Part 124, EPA must issue, based on the administrative record, a notice of intent to deny the facility permit (*see* 40 CFR section 124.6(b) and 124.9). The notice must be publicly distributed, accompanied by a statement of basis or fact sheet, and there must be an opportunity for public comment, including an opportunity for a public hearing, on EPA's proposed permit denial (*see* 40 CFR sections 124.7, 124.8, 124.10, 124.11, and 124.12). In making a final permit determination, EPA must respond to any public comments (*see* section 124.17). Under 40 CFR section 124.19, final decisions are subject to appeal.

[19] An alternative approach should be used to acknowledge completion of corrective action determinations that apply to less than an entire facility (*see* discussion below). An alternative approach could also acknowledge completion of corrective action at a facility with ongoing RCRA activities. For example, a facility may be conducting post-closure care at a regulated unit under an alternate non-permit authority, as allowed under the October 22, 1998 Post-Closure rule (*see* 63 FR 56710), yet may have completed corrective action at its solid waste management units. In this case, interim status generally should not be terminated because all RCRA obligations have not been met, but it may be appropriate to issue a notice (as described above) recognizing completion of the corrective action obligations to bring finality to that process.

Federal Register

Wednesday,
February 27, 2002

Part IX

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB28

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

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

ACTION: Final rule.

SUMMARY: This final rule revises two provisions of the Mine Safety and Health Administration's (MSHA) existing rule pertaining to "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706, RIN 1219–AB11).

The two provisions are the evidence and tagging provisions of the Maintenance standard and the definition of introduced in the Engine standard. The revisions clarify the existing rule.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (E-mail), 703–235–5551 (Fax), or 703–235–1910 (Voice). You may obtain copies of the final rule in alternative formats by calling this number. The alternative formats available are either a large print version of the final rule or the final rule in an electronic file on computer disk. You may obtain copies of this final rule from MSHA's website at *http://www.msha.gov* under Statutory and Regulatory Information.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2001 (66 FR 5706), MSHA published a final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter (dpm). The final rule established new health standards for underground metal and nonmetal miners working at mines that use equipment powered by diesel engines. The rule was designed to reduce the risk to these miners of serious health hazards that are associated with exposure to high concentrations of dpm. The final rule was to become effective on March 20, 2001.

On January 29, 2001, Anglogold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the rule in the District of Columbia Circuit Court of Appeals. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and the MARG Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit Court of Appeals. The three petitions have been consolidated and are pending in the District of Columbia Circuit Court of Appeals. The United Steelworkers of America (USWA) intervened in the litigation.

While these challenges were pending, the Anglogold petitioner filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioner similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule.

On March 15, 2001 (66 FR 15032), MSHA delayed the effective date of the final rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 7702). This delay was necessary to give Department of Labor (Department) officials the opportunity for further review and consideration of these new regulations. On May 21, 2001 (66 FR 27863), MSHA published a document in the **Federal Register** further delaying the effective date of the final rule until July 5, 2001 to allow the Department an opportunity to continue negotiations to settle the legal challenges to the final rule.

As a result of settlement negotiations, on July 5, 2001, MSHA published two notices in the **Federal Register** addressing the January 19, 2001 final rule on dpm exposures of underground metal and nonmetal miners. One notice (66 FR 35518) delayed the effective date of § 57.5066(b) regarding the evidence and the tagging provision of the Maintenance standard; clarified the effective dates of certain provisions of the final rule; and gave correction amendments. MSHA noted that its intent in delaying the effective date of final § 57.5066(b) was to assist the parties in negotiating an acceptable disposition of the pending litigation.

The proposed rule published in the **Federal Register** on July 5, 2001 (66 FR 35521) would clarify in § 57.5066(b)(1) and (b)(2) of the maintenance standards the terms *promptly* and *evidence*, as used in paragraphs (b)(1) and (b)(2), respectively. The proposed rule would also add a new paragraph (b)(3) to § 57.5067 (regarding the definition of *introduced* in the Engine standard) to clarify that the term *introduced* does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator. The proposed rule allowed the affected mining community further opportunity to express its concerns to MSHA about these provisions of the January 2001 final rule.

The comment period on the proposed rule closed on August 6, 2001. MSHA received comments from trade associations, organized labor, and individual mine operators. A public hearing was held in Arlington, Virginia, on August 16, 2001. The United Steelworkers of America presented the only oral testimony at this hearing. The rulemaking record closed on August 20, 2001.

II. Section-by-Section Discussion of This Final Rule

The following section-by-section analysis explains this final rule and its effect on existing standards.

A. Section 57.5066, Maintenance standards

Paragraph (b)(1) of this final § 57.5066, as published on January 19, 2001, requires operators of underground metal and nonmetal mines to authorize and require that each miner operating diesel-powered equipment underground affix a visible and dated tag to the equipment at any time the miner notes evidence that the equipment may require maintenance to comply with the maintenance standards of paragraph (a) of § 57.5066. However, the January 19, 2001 final rule did not specify the type of evidence MSHA intended for equipment operators to use to determine when the equipment must be tagged for prompt examination by an authorized person. The January 19, 2001 final rule, as published, could have resulted in equipment operators tagging a piece of diesel-powered equipment for reasons unrelated to diesel emissions. This was contrary to what MSHA intended, and the mining community requested that MSHA clarify the term *evidence*.

Revised paragraph (b)(1) of § 57.5066 is the same as the January 19, 2001 final rule with the exception of the clarification of the term *evidence*. *Evidence* means "visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions."

Commenters commended MSHA on proposing to clarify § 57.5066(b)(1). Some commenters, however, suggested that MSHA make further modifications to the tagging requirements of the standard to avoid confusion with the tagging requirements of MSHA's safety standard for self-propelled mobile equipment at § 57.14100(c), Safety defects; examination, correction and records.

These commenters were concerned that a miner would operate a defective piece of equipment tagged under § 57.14100(c), which requires tagged equipment to be removed from service until defects are corrected. Commenters feared that the two tags might be confused and tagged equipment could be removed unnecessarily or that unsafe equipment might not be removed. Section 57.14100(c) requires that:

> When defects make continued operation hazardous to persons, the defective items, including self-propelled mobile equipment, shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

A commenter suggested that MSHA allow the mine operator to choose the means of identification for purposes of the dpm tag to avoid confusion with the tagging requirements of § 57.14100(c). Other commenters suggested that the best way to reconcile § 57.14100(c) and proposed § 57.5066(b)(1) is by adding an additional paragraph (b)(3) to proposed § 57.5066(b)(1), to allow a mine operator to incorporate the mine's procedures adopted pursuant to § 57.14100 or allow the mine operator to develop an alternative system for identifying equipment referred to in the dpm standard. These commenters also suggested that the alternative system be subject to approval by the appropriate MSHA District Manager.

By contrast, some commenters stated that the safety tag required under § 57.14100(c) and the diesel emissions tag required under § 57.5066(b)(1) will not create confusion among miners. These commenters noted that under § 57.5066(b)(1), mine operators have the flexibility to design their own diesel emissions tag and that they can design the tag to be of a particular shape or color to avoid any confusion with the safety tag. These commenters noted, however, that it is essential for the final standard to continue to require that the diesel emissions tag be dated.

MSHA considered the concerns raised by all of the commenters pertaining to the tagging requirements in the dpm standard. MSHA considered requiring a particular design for the diesel emissions tag, but chose not to impose an additional compliance burden upon operators because little, if any, safety and health benefit would be achieved. Additionally, MSHA believes that the possibility that miners will confuse the safety tag with the diesel emissions tag is remote. As noted by some commenters, proposed § 57.5066(b)(1) does not specify the design of the diesel emissions tag which can be differentiated by size, color, or other obvious visual characteristics to avoid confusion. Under the proposed rule, MSHA left this decision to the discretion of the mine operator. Therefore, the final rule is the same as the proposed rule for the diesel emissions tag.

A commenter suggested that MSHA provide the operator the option of either tagging the equipment as proposed, or allow the miner to include on the pre-shift inspection card that evidence was noted that the equipment might require maintenance related to the diesel engine. This commenter stated that the use of the pre-shift inspection card is allowed under § 57.14100 and it could be used to meet the maintenance-related provision of the dpm regulation. This commenter also stated that this documentation would be available during compliance inspections.

MSHA determined that the tagging requirement of § 57.5066(b)(1) is both necessary and more protective than the alternative suggested by the commenter. The requirements of § 57.5066(b)(1) and § 57.14100(c) cannot be consolidated because these standards serve different purposes. The purpose of § 57.14100(c) is to remove equipment from service if it poses a safety hazard to miners, whereas the purpose of § 57.5066(b)(1) is to identify a potential exposure-related problem that may require maintenance but does not justify removal from service.

A commenter stated that an equipment operator is not a mechanic trained in diesel engine maintenance, and should not have the authority to tag out diesel equipment if the odor or visible smoke level of the equipment changes. This commenter stated that odor is not a reasonable distinguishing factor because multiple activities occurring throughout the working environment could emit a misleading smell. This commenter was also concerned that if the equipment operator became disgruntled that day, the equipment operator could tag the unit in question in order to delay operations. According to this commenter, if the equipment operator believes there is an irregularity in the machine, the equipment operator should inform the immediate supervisor. Then, the supervisor, the qualified mechanic, and the equipment operator would assess the unit to see if any action should be taken.

MSHA acknowledges this commenter's concerns. However, the dpm rule does not require that the tagged equipment be removed from service. Consistent with the proposed rule, the final rule requires only that the equipment operator be authorized and required to note, by affixing a tag, a potential problem in a diesel-powered machine. It is also the responsibility of the mine operator to respond appropriately to the presence of the tag.

MSHA reproposed paragraph (b)(1) to clarify the type of evidence that should alert the equipment operator to the fact that the equipment needs to be tagged for examination. This paragraph, as revised in the final rule, addresses the potential problem of disgruntled miners inappropriately tagging the dpm equipment. MSHA believes that, because equipment operators spend more time operating the equipment than other miners (such as mechanics), and are present when the equipment functions under the widest range of operating conditions, they are better able to detect emissions-related problems than are mechanics. It is MSHA's opinion that even though equipment operators may not be trained or qualified as diesel mechanics, they often recognize the difference between normal and abnormal equipment performance, especially as it relates to diesel particulate matter generation, which is often plainly visible or apparent (for example, black smoke while the equipment is under normal load).

Some commenters suggested that, in terms of the evidence of diesel emission problems, MSHA replace the phrase "under normal operating procedures" with "under normal operations." These commenters believed that their suggested language would clarify and simplify the rule. Other commenters, however, objected to the suggested change, noting that it could alter the purpose of the provision.

MSHA agrees with those commenters who believe that the suggested change could alter the meaning of the provision. MSHA intends that the evidence of diesel emission problems relate to the operation of a particular piece of diesel equipment. On the other hand, the suggested phrase "under normal operations" could be construed as referring to the normal operating procedures of a particular mine as a whole. This is not MSHA's intent.

Final paragraph (b)(2) of § 57.5066, adopts the proposed language requiring that mine operators of underground metal and nonmetal mines make certain that any equipment tagged pursuant to this section is promptly examined by a person authorized to maintain diesel equipment, and that the tag not be removed until the examination has been completed. The mining community requested that MSHA clarify the term *promptly* as it appeared in the January 19, 2001 final rule. In response to commenters, MSHA proposed a revision to paragraph (b)(2) of § 57.5066. MSHA proposed that the term *promptly* be clarified to mean, "before the end of the next shift during which a qualified mechanic is scheduled to work." For example, an equipment operator, on the morning shift, tags a piece of diesel-powered equipment because it is emitting visible black smoke. The operator's qualified person who performs the maintenance checks on such equipment works at the mine only on the midnight shift. The mine operator must make certain that the qualified person examines the tagged equipment before the end of the midnight shift. In the interim, the mine operator can continue to use the equipment as long as the tag is not removed. MSHA's experience is that most underground metal and nonmetal mines have intermittent maintenance schedules. Maintenance at these mines may be conducted on the late night shift during periods of less production activities in the mine. MSHA received no comments specifically addressing this proposed change, and the language of the final rule is the same as the proposed rule.

MSHA proposed no change to the language of paragraph (b)(3) of § 57.5066 of the January 19, 2001 final rule, and MSHA received no comments addressing this provision. Final paragraph (b)(3) of § 57.5066 continues to require that a mine operator retain a log of any equipment tagged pursuant to this section. The log must include the date the equipment is tagged, the date the equipment is examined, the name of the person examining the equipment, and any action taken as a result of the examination. The operator must retain the information in the log for a period of at least one year after the date the tagged equipment is examined.

B. Section 57.5067, Engines

Paragraph (a) of § 57.5067 of the January 19, 2001 final rule requires that any diesel engine added to the fleet of an underground metal or nonmetal mine after the effective date of the rule be approved by MSHA under 30 CFR part 7 or 30 CFR part 36, or meet or exceed the applicable dpm emission requirements of the Environmental Protection Agency (EPA) incorporated in paragraph (a) of the engines standard. Diesel engines used in ambulances and firefighting equipment are specifically exempted from this provision in the final rule.

Paragraph (b)(1) of § 57.5067 of the January 19, 2001 final rule states:

> (1) The term *introduced* means any engine added to the underground inventory of engines of the mine in question, including:
> (i) An engine in newly purchased equipment;
> (ii) An engine in used equipment brought into the mine; and
> (iii) A replacement engine that has a different serial number than the engine it is replacing.

Paragraph (b)(2) states:

> The term *introduced* does not include engines that were previously part of the mine inventory and rebuilt.

Thus, the application of the term *introduced* in § 57.5067 of the January 19, 2001 final rule required mine operators who transferred existing engines or diesel-powered equipment from one underground mine to another underground mine operated by the same mine operator to obtain MSHA approval for the diesel engine pursuant to 30 CFR part 7 or 30 CFR part 36, or meet or exceed the applicable dpm emission requirements of the EPA incorporated in paragraph (a) of the engine standard. This is contrary to what MSHA intended, and the mining community requested that MSHA clarify the definition of *introduced*.

Accordingly, MSHA proposed to revise § 57.5067 by adding a new paragraph (b)(3) to clarify that the term *introduced* does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator. MSHA proposed no change to paragraphs (b)(1) and (2) of the January 19, 2001 final rule, and no comments were received by MSHA on these provisions.

In general, commenters supported the need to clarify the term *introduced* in paragraph (b)(3) of § 57.5067. A number of commenters, however, suggested certain modifications to the proposed language. These commenters recommended that MSHA add "or affiliated company or corporate entities of that operator" at the end of proposed paragraph (b)(3) so that the definition of introduced would read as follows:

> The term *introduced* does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator or affiliated company or corporate entities of that operator.

These commenters stated that the suggested language would expand MSHA's concept to include corporate divisions within the same parent corporation, assuring that all operators of multiple underground mines were treated equally regardless of their corporate structure, and also would clarify that affiliated corporations, even across national borders, are included in the term *mine operator* for purposes of the rule.

Additionally, these commenters were of the opinion that proposed paragraph (b)(3) would still impose an undue burden and hardship on numerous mine operators because it would prohibit mining companies that have chosen to segregate different regions by creating separate affiliated corporations (for example, Operator A West, Operator A East, and Operator A Central), from transferring diesel-powered equipment between mines operated by another corporate division. They believe this may cause separate corporate divisions of the same parent-corporation to have to purchase multiple diesel-powered machines when the transfer of one machine is all that is necessary. These commenters also indicated that the same issue arises for operators with mines outside the United States, who may frequently (or even occasionally) transfer diesel equipment between foreign mines (whose ownership necessarily is through a different corporate entity) and domestic mines.

By contrast, some commenters strongly disagreed that MSHA should revise proposed paragraph (b)(3) of § 57.5067 to incorporate the suggested phrase "or affiliated company or corporate entities of that operator," stating that MSHA's intent, as expressed in the proposed rule, was clear and that the definition of *introduced* covered only domestic mine entities. These commenters requested that the preamble to the final rule specifically address this issue so that all interested parties are clear on the application of the term *introduced*.

MSHA wants to emphasize that the exemption from the definition of *introduced* in revised paragraph (b)(3) of § 57.5067 applies to the transfer of existing diesel engines or diesel-powered equipment from the inventory of one underground mine to another underground mine operated by the same mine operator, even if the mines have different identification numbers.

A mine operator may move a diesel engine from one mine to another mine if both mines are underground and

operated by the same mine operator, and the diesel-powered engine being moved was introduced into at least one of the mines before July 5, 2001, the effective date of the rule, and the engine is listed on each mine's inventory. For compliance purposes, MSHA informed the mining community in its most recent diesel particulate public meetings that MSHA will conduct a physical inventory of diesel engines in every underground metal and nonmetal mine. Any diesel engine entered on MSHA's inventory and which meets the requirements listed above will be exempt from the approval requirements of § 57.5067.

Final § 57.5067 does not exempt engines and equipment jointly owned or shared by different mine operators, even if the engine carries an MSHA approval plate or meets the EPA requirements in paragraph (a) of § 57.5067. Final § 57.5067(b)(3) does not exempt diesel engines or equipment transferred between two mines with the same parent corporation or among affiliated mines. As to the transfer of diesel engines and equipment between mines operated by affiliated companies, MSHA declines to accept the commenters' suggestion. The purpose of this provision was to encourage the introduction of cleaner diesel-powered equipment into underground mines as expeditiously as possible. The commenters did not demonstrate a compelling economic need to justify this departure from generally accepted concepts of equipment ownership by operating companies. Expansion of the equipment ownership concept to potentially remote entities who may have little economic interest in or control over the operations of a particular mine would defeat the Agency's objective of getting cleaner engines into underground mines.

This rulemaking was limited in scope in that it only revised two provisions of the January 19, 2001 final rule. MSHA, however, received comments from the mining community regarding the January 19, 2001 final rule's risk assessment, as well as its regulatory flexibility analysis. MSHA did not address these comments because they exceeded the scope of this rulemaking. The preamble to the January 19, 2001 final rule contains a detailed discussion about MSHA's cost analysis and determination of significance of risk, and addresses comments received from the mining community on these issues.

III. Impact Analyses

A. Cost and Benefits: Executive Order 12866

There are no costs associated with this final rule because the costs in the economic analysis for this rulemaking have already been accounted for in the economic analysis that supported the January 19, 2001 final rule. The costs shown in the economic analysis supporting this rulemaking, were taken directly from the economic analysis that supported the dpm final rule published on January 19, 2001.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA determined that the January 19, 2001 dpm final rule (including the two provisions in the economic analysis supporting this rulemaking) was not economically significant but was a significant regulatory action under Executive Order 12866.

The economic analysis in support of the January 19, 2001 final rule demonstrated that the dpm final rule for underground metal and nonmetal mines will reduce a significant health risk to underground miners. Benefits of the January 19, 2001 final rule included reductions in lung cancers. As the mining population turns over, MSHA estimated that a minimum of 8.5 lung cancer deaths will be avoided per year. Other benefits include reductions in the risk of death from cardiovascular, cardiopulmonary, or respiratory causes and reductions in the risk of sensory irritation and respiratory symptoms. By improving compliance with the January 19, 2001 final rule, this final rule will contribute to the realization of the benefits mentioned above.

B. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small mine and publishes that definition in the **Federal Register** for notice and comment. For the mining industry, SBA defines *small* as a mine with 500 or fewer workers. MSHA traditionally has considered small mines to be those with fewer than 20 workers. MSHA has analyzed the economic impact of the final rule on mines with 500 or fewer workers (as well as on those with fewer than 20 workers). MSHA has concluded that the final rule does not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million.

D. Paperwork Reduction Act of 1995 (PRA)

The final rule would impose no new or additional burden hours or related costs. Burden hours and related costs shown in the economic analysis supporting this rulemaking were taken from the economic analysis that supported the January 19, 2001 final rule. The burden hours and costs presented in the economic analysis supporting this rulemaking are provided to give a detailed account of the two revised provisions.

E. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the environment. MSHA has reviewed the final rule in accordance with NEPA requirements (42 U.S.C. 4321 et. seq.), the regulations of the Council of Environmental Quality (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, MSHA has determined that this rule will have no significant environmental impact.

F. Executive Order 12630

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

G. Executive Order 13045 Protection of Children from Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the final rule on children. MSHA has determined that the rule will not have an adverse impact on children.

H. Executive Order 12988 (Civil Justice)

MSHA has reviewed Executive Order 12988, Civil Justice Reform, and determined that the final rule will not unduly burden the Federal court system. The rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

I. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

MSHA has reviewed the final rule in accordance with Executive Order 13175, and certifies that the final rule will not impose substantial direct compliance costs on Indian tribal governments.

J. Executive Order 13132 (Federalism)

MSHA has reviewed the final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have federalism implications. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

K. Executive Order 13211 (Energy)

MSHA has reviewed this final rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations and has determined that this final rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and Nonmetal, Mine Safety and Health, Underground mines.

Dated: February 14, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending Chapter I, Title 30 of the Code of Federal Regulations to read as follows:

PART 57—[AMENDED]

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.5066 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 57.5066 Maintenance standards.

* * * * *

(b)(1) A mine operator must authorize each miner operating diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance in order to comply with the maintenance standards of paragraph (a) of this section. The term *evidence* means visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions.

(2) A mine operator must ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized to maintain diesel equipment, and that the affixed tag not be removed until the examination has been completed. The term *promptly* means before the end of the next shift during which a qualified mechanic is scheduled to work.

* * * * *

3. Section 57.5067 is amended by adding paragraph (b)(3) to read as follows:

§ 57.5067 Engines.

* * * * *

(b) * * *

(3) The term *introduced* does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator.

[FR Doc. 02–4611 Filed 2–26–02; 8:45 am]

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RULES GOING INTO EFFECT FEBRUARY 27, 2002

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- Chlorhexidine ointment; published 2-27-02

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TREASURY DEPARTMENT

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Organization, functions, and authority delegations:
- Appropriate ATF officers; published 2-27-02

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  - Snapper-grouper; comments due by 3-4-02; published 1-31-02 [FR 02-02301]
  - Snapper-grouper; comments due by 3-4-02; published 1-31-02 [FR 02-02405]
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 3-6-02; published 2-19-02 [FR 02-03980]
  - Domestic fisheries; exempted fishing permit applications; comments due by 3-6-02; published 2-19-02 [FR 02-03981]

Permits:
- Marine mammals; comments due by 3-7-02; published 1-8-02 [FR 02-00439]

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- Hazardous material safety data; comments due by 3-5-02; published 1-4-02 [FR 02-00117]

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- Ohio; comments due by 3-4-02; published 1-31-02 [FR 02-02379]

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- Texas; comments due by 3-6-02; published 2-4-02 [FR 02-02613]

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  - National priorities list update; comments due by 3-7-02; published 2-5-02 [FR 02-02507]

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- Prince William Sound, AK; traffic separation scheme; port access route study; comments due by 3-8-02; published 2-6-02 [FR 02-02756]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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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)

S. 737/P.L. 107–144
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
To designate the facility of the United States Postal Service located at 39 Tremont Street, Paris Hill, Maine, as the "Horatio King Post Office Building". (Feb. 14, 2002; 116 Stat. 19)

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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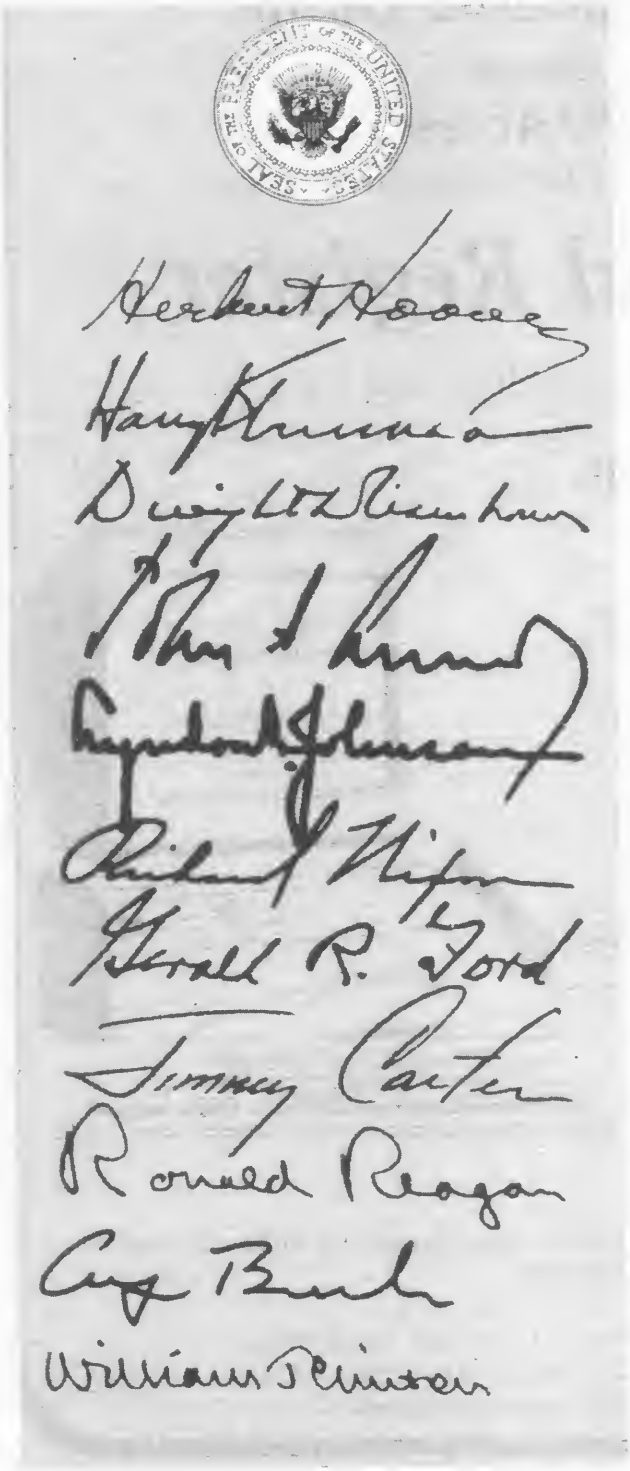

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