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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ35

Prevailing Rate Systems; Definition of San Joaquin County, CA, as a Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule that will define San Joaquin County, California, as a new nonappropriated fund (NAF) Federal Wage System (FWS) wage area. San Joaquin County is currently in the Sacramento, California, NAF FWS wage area. This change is necessary because the Army and Air Force Exchange Service built a new distribution facility in San Joaquin County that now has a large number of NAF FWS employees.

DATES: *Effective Date:* This interim rule is effective on January 23, 2002. *Applicability Date:* Agencies will place NAF FWS employees in San Joaquin County on the new San Joaquin wage schedule on the first day of the first applicable pay period beginning on or after April 13, 2002. Comments must be received by February 22, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: William T. Beacham, (202) 606–2848, FAX: (202) 606–4264, or email wtbeacha@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is defining San Joaquin County, California, as a new nonappropriated fund (NAF) Federal Wage System (FWS) wage area. San Joaquin County is currently defined as an area of application to the Sacramento, CA, NAF FWS wage area. The Army and Air Force Exchange Service (AAFES) built a new distribution facility, which has about 450 NAF FWS employees. Under section 5343(a) of title 5, United States Code, NAF FWS wage area boundaries may not extend beyond the immediate locality where NAF employees work. OPM may establish an NAF wage area under § 532.219 of title 5, Code of Federal Regulations, when there is a minimum of 26 NAF wage employees in a survey area and there is sufficient private employment within the survey area to provide adequate data for establishing an NAF wage schedule.

San Joaquin County meets the regulatory criteria to be a separate NAF wage area. Under § 532.219, there must be a minimum of 1,800 private enterprise employees in establishments within the scope of an NAF survey for a separate wage area to be established. San Joaquin County has more than 139,000 private enterprise employees in surveyable establishments.

The Sacramento NAF wage area continues to meet the criteria under 5 CFR 532.219 to remain a separate NAF FWS wage area. No other counties in the Sacramento NAF FWS wage area are affected by the removal of San Joaquin County from the Sacramento wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. The first local wage survey for the new San Joaquin wage area will begin in February 2002. NAF FWS employees in San Joaquin County will be placed on the new San Joaquin wage schedule on the first day of the first applicable pay period beginning on or after April 13, 2002, the effective date of the new wage schedule.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to define San Joaquin County, CA, to an NAF wage area as soon as possible to set pay for NAF FWS employees in San Joaquin County on the basis of local prevailing rates.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys [Amended]

2. Appendix B to subpart B is amended by adding under the State of California, after San Francisco, "San Joaquin" to the wage area listing, with the beginning month as "February" and the fiscal year of full-scale survey as "even."

3. Appendix D to subpart B is amended by revising the wage area listing for Sacramento, California, by removing "San Joaquin" from the area of application and adding "San Joaquin" as a new nonappropriated fund wage area, after "San Francisco," to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

* * * * *

CALIFORNIA

* * * * *

SAN JOAQUIN

Survey area

California:
San Joaquin
Area of Application. Survey area.

* * * * *

[FR Doc. 02–1605 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB79

Common Crop Insurance Regulations; Millet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is adding crop provisions for the insurance of millet. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the millet pilot crop insurance program to a permanent insurance program administered by FCIC for the 2003 and succeeding crop years.

EFFECTIVE DATE: February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through January 31, 2002.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Monday, June 19, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 37919–37922 to add 7 CFR 457.165 Millet crop insurance provisions effective for the 2002 and succeeding crop years.

Following publication of the proposed rule on June 19, 2000, the public was afforded 30 days to submit written comments and opinions. A total of 21 comments were received from two reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. Two reinsured companies and a trade association questioned why the contract change date contained in section 3 of these provisions was changed from December 31 to November 30.

Response. The contract change date was changed from December 31 to November 30 in section 3 to maintain the same time period between the contract change date and the cancellation date to be consistent with other annual crop insurance policies.

Comment. Two reinsured companies and a trade association questioned why section 11 (Written Agreement) of the previous pilot provisions was removed from the proposed rule.

Response. Section 11 was removed from the millet crop provisions because it is contained in the Basic Provisions and, therefore, is already part of the policy.

Comment. Two reinsured companies and a trade association questioned why the unit of measure, "hundredweight" was replaced by the unit of measure, "bushel" as defined in section 1 of these provisions.

Response. The appropriate unit of measure was changed from "hundredweight" to "bushel" for the following reasons: (1) There is no single

standard of measure for millet; it is not contained in the United States Grain Standards or any other standards; (2) FCIC has determined that for quality purposes on a bushels basis, the test weight for millet is 50 lbs. per bushel and a test weight under 50 lbs. per bushel is eligible for quality adjustment; and (3) A bushel unit of measurement is consistent with other crops, *i.e.*, grain sorghum.

Comment. Two reinsured companies and a trade association recommend the word "limited" be removed from section 12 (Prevented Planting) of the Millet crop provisions.

Response. FCIC agrees with commenters. The proposed rule stated that if the producer had limited or additional levels of coverage and paid additional premium, the producer could increase prevented planting coverage pursuant to the actuarial documents. FCIC has removed the incorrect reference to the word "limited" from section 12 of these provisions.

Comment. Two reinsured companies and a trade association questioned whether millet planted as a nurse crop is insurable.

Response. The proposed rule allowed millet grown as a nurse crop unless harvested as grain to be insured by written agreement or pursuant to Special Provisions. However, FCIC has revised section 5(c) to state that millet planted as a nurse crop is not insurable. This change was made because millet must be swathed and windrowed prior to combining or threshing and practice cannot be done when millet is planted as a nurse crop.

Comment. Two reinsured companies and a trade association questioned the end insurance period provisions in proposed section 7. The proposal allowed 25 days after swathing millet until the end of insurance period calendar date in North Dakota and South Dakota and only 15 days after swathing millet until the end of the insurance period calendar date in all other states.

Response. The variance of days provides adequate time for swathed millet to dry prior to completing harvest. The time variances are based on geographical locations, therefore, no changes have been made in response to this comment.

Comment. Two reinsured companies and a trade association recommend adding language to the peril of fire provision contained in section 8 of these provisions to read, "Fire, but only of natural origin and not artificial or man-made".

Response. FCIC agrees with commenters but will not incorporate the suggested language in these crop provisions. FCIC is revising the Common Crop Insurance Policy Basic Provisions due to changes required by the Agricultural Protection Act of 2000. Language indicating that all causes of loss must be due to an act of natural origin will be included in this revision instead.

In addition to the changes described above, FCIC has revised section 7(b) to add language, "unless otherwise specified in the Special Provisions." This change allows for the flexibility for different ending dates of the insurance period when millet is expanded into other states as a result of changes in agronomic and geographic growing conditions.

List of Subjects in 7 CFR Part 457

Crop insurance, Millet, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.165 is added to read as follows:

§ 457.165 Millet crop insurance provisions.

The Millet Crop Insurance Provisions for the 2002 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Millet Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. *Definitions.*

Bushel. Fifty pounds of millet, or any other quantity which is designated in the Special Provisions for that purpose.

Harvest. Combining or threshing the millet for grain. A crop that is swathed prior to combining is not considered harvested.

Late planting period. In lieu of the definition of "Late planting period" contained in section 1 of the Basic Provisions, late planting period is defined as the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

Local market price. The cash price for millet with a 50-pound test weight adjusted to zero percent foreign material content basis offered by buyers in the area in which you normally market the millet. Factors not associated with grading, including, but not limited to moisture content, will not be considered.

Millet. Proso millet produced for grain to be used primarily as bird and livestock feed.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition of "Planted acreage" contained in section 1 of the Basic Provisions, planted acreage is also defined as land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in the definition of "planted acreage" will not be insurable unless otherwise provided by the Special Provisions.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

Windrow. Millet that is cut and placed in a row.

2. *Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.*

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the millet in the county insured under this policy.

3. *Contract Changes.*

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. *Insured Crop.*

In accordance with section 8 of the Basic Provisions, the crop insured will be all the millet in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is not planted as a nurse crop; and

(d) That is not (unless allowed by Special Provisions or written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

6. *Insurable Acreage.*

In addition to section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. *Insurance Period.*

In accordance with section 11 of the Basic Provisions, the calendar date for the end of

the insurance period is the date immediately following planting as follows:

(a) North Dakota and South Dakota:

(1) September 15 for acreage not swathed and windrowed; or

(2) October 10 for acreage swathed and windrowed by September 15;

(b) All other states, unless otherwise specified in the Special Provisions:

(1) September 30 for acreage not swathed and windrowed by September 30; or

(2) October 15 for acreage swathed and windrowed by September 30.

8. *Causes of Loss.*

In accordance with section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by a cause of loss that occurs during the insurance period.

9. *Duties In the Event of Damage or Loss.*

In accordance with section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting the total production to count (See section 10(c)) from the result of section 10(b)(1);

(3) Multiplying the result of section 10(b)(2) by your price election; and

(4) Multiplying the result of section 10(b)(3) by your share and any adjustment from section 10(f).

For example:

You have a 100 percent share in 100 acres of millet in the unit, with a guarantee of 15 bushels per acre and a price election of $4.00 per bushel. You are only able to harvest 800 bushels. Your indemnity would be calculated as follows:

(1) 100 acres × 15 bushel = 1,500 bushel guarantee;

(2)1,500 bushels guarantee − 800 bushel production to count = 700 bushel loss;

(3) 700 bushel × $4.00 price election = $2,800 loss; and

(4) $2,800 × 100 percent share = $2,800 indemnity payment.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Your appraised production will not be less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 10(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature millet may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each 0.1 percent point of moisture in excess of 12 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, result in the millet weighing less than 50 pounds per bushel; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3). will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

(ii) The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the millet; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)(ii) will be divided by the local market price to determine the quality adjustment factor;

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushel, if appropriate) of the damaged or conditioned production under section 10(d)(1) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

(f) If the insured crop is not swathed and not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 30 percent to reflect those costs

not incurred by you. If the insured crop is swathed but not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 15 percent to reflect those costs not incurred by you.

11. *Late Planting.*

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent for the first through the tenth day; and

(b) Three percent for the eleventh through the twentieth day.

12. *Prevented Planting.*

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have an additional coverage level, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, DC, on January 16, 2002.

Phyllis W. Honor,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–1619 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB70

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This direct final rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging of resources scoring criterion; revise financial information to be submitted; and make other minor changes and corrections.

DATES: This rule will become effective March 11, 2002, unless we receive written adverse comments or a written notice of intent to submit adverse comments on or before February 22, 2002. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held.

Written comments must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than February 22, 2002.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590 or via facsimile transmission to (202) 720–0810. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250–1550. Telephone: 202–720–0413; e-mail at *mmorgan@rus.usda.gov*; or, Fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic adverse impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601). The RUS DLT loan and grant program provides recipients with grants and loans at interest rates and on terms that are more favorable than those generally available from the private sector. Recipients, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with the RUS regulations and requirements.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.855 Distance Learning and Telemedicine Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0096, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C chapter 35).

Unfunded Mandates

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

Background

RUS is amending 7 CFR 1703, subparts D, E, F and G of its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. The current regulations implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) (7 U.S.C. 950aaa *et seq.*) to encourage and improve telemedicine services and distance learning services in rural areas.

Subpart D is being amended to clarify eligibility for various types of financial assistance. Section 1703.103 is revised to clarify eligibility criterion for applicants in conformance with paragraphs (c)(1) and (2) of section 2333 of the 1996 Act (7 U.S.C. 950aaa–a(1) and (2). Sections 1703.131(h) and 1703.141(h) are revised to clarify that transmission facilities may be financed only with a loan and in connection with a distance learning or telemedicine project. Funding of transmission facilities is further clarified under section 1703.101. Additionally the word "eligible" was removed from the first sentence of the consortium definition and the definition of "eligible organization" was deleted under the definition section. Eligibility criteria are set forth in § 1703.103.

This rule also amends the method of calculation for the minimum matching contribution of a grant in subpart E. This rule also readjusts the award of points for the leveraging of resources scoring criterion.

Subpart E clarifies the circumstances under which the grant program will fund telecommunications facilities.

This rule makes an additional modification to subpart E regarding required financial information. This will streamline the application process for applicants.

List of Subjects in Part 1703

Community development; Grant programs—housing and community development; Loan programs—housing and community development, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1703—RURAL DEVELOPMENT

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

Authority: 7 U.S.C. 950aaa *et seq.*

Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

2. Amend § 1703.102 by removing the definition of "Eligible organization" and revising the definitions of "Consortium" and "Rural Community Facilities" to read as follows:

§ 1703.102 Definitions.

* * * * *

Consortium means a combination or group of entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. At least one of the entities in a consortium must meet the requirements of § 1703.103.

* * * * *

Rural community facility means a facility such as a school, library, learning center, training facility, hospital, or medical facility that provides educational or health care benefits primarily to residents of rural areas.

* * * * *

3. Revise § 1703.103 to read as follows:

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive a grant, loan and grant combination, or loan under this subpart:

(1) The applicant must be legally organized as an incorporated organization or partnership, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c), a state or local unit of government, a consortium, as defined in § 1703.102, or other legal entity, including a private corporation organized on a for profit or not-for profit basis. Each applicant must provide written evidence of its legal capacity to contract with RUS to obtain the grant, loan and grant combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with RUS in its own behalf.

(2) The applicant proposes to utilize the financing to:

(i) Operate a rural community facility; or

(ii) Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

(b) Electric or telecommunications borrowers are not eligible for grants.

Subpart E—Distance Learning and Telemedicine Grant Program

4. Remove and reserve § 1703.120

5. Amend § 1703.121 by revising the introductory text to read as follows:

§ 1703.121 Approved purposes for grants.

For distance learning and telemedicine projects, grants shall finance only the costs for approved purposes. Grants shall be expended only for the costs associated with the initial capital assets associated with the project. The following are approved grant purposes:

* * * * *

6. Amend § 1703.122 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1703.122 Matching contributions.

(a) The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grants listed in § 1703.121. Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in § 1703.121 may be substituted for cash.

* * * * *

(e) Any financial assistance from Federal sources will not be considered as matching contributions under this subpart unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

7. Amend § 1703.123 by revising paragraph (a)(1) to read as follows:

§ 1703.123 Nonapproved purposes for grants.

(a) * * *

(1) To cover the costs of acquiring, installing or constructing telecommunications transmission facilities;

* * * * *

8. Amend § 1703.125 by removing the words "purchases or leases of" from the first sentence of (h)(2) and by revising paragraph (e) to read as follows:

§ 1703.125 Completed application.

* * * * *

(e) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating: feasibility of the project, including having sufficient resources and expertise necessary to undertake and complete the project; and, how the project will be sustained following completion of the project.

* * * * *

9. Amend § 1703.126 by revising paragraph (a)(4) to read as follows:

§ 1703.126 Criteria for scoring grant applications.

(a) * * *

(4) The ability of the applicant to leverage financial resources—Up to 35 points. This criterion will be used to evaluate the ability of the applicant to provide a matching contribution for the project using other non-Federal financial assistance. Documentation submitted in support of the application should reflect any additional financial support for the project from non-Federal sources above the applicant's minimum matching contribution of 15 percent as required by § 1703.122. The applicant must include evidence, from authorized representatives of the sources, of a commitment that the funds are available and will be used for the project. The applicant will receive points as follows:

(i) Matching contribution for approved purposes greater than 15 percent, but less than or equal to 30 percent of the grant requested—0 points.

(ii) Matching contribution for approved purposes greater than 30 percent, but less than or equal to 50 percent of the grant requested—15 points.

(iii) Matching contribution for approved purposes greater than 50 percent, but less than or equal to 75 percent of the grant requested—25 points.

(iv) Matching contribution for approved purposes greater than 75 percent, but less than or equal to 100 percent of the grant requested—30 points.

(v) Matching contribution for a grant for approved purposes greater than 100 percent of the grant requested—35 points.

* * * * *

Dated: December 28, 2001.

Roberta D. Purcell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–1537 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–15–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE56

Small Business Size Standards; Inflation Adjustment to Size Standards

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) is adjusting its monetary-based size standards, (e.g., receipts, net income, net worth, and assets) for the effect of inflation. This action is intended to maintain the value of size standards in inflation-adjusted terms. From 1994 to the third quarter of 2001 the general level of prices in the United States increased approximately 15.8% as measured by the chain-type price index for gross domestic product. This change will restore eligibility to firms that may have lost small business status solely due to the effect of inflation.

SBA is adding a provision in its regulations that will require, at least once every five years, an assessment of the inflationary impact on monetary-based size standards. This periodic review will generally ensure that monetary-based standards are current with inflationary factors, as appropriate, and that firms will not lose small business status due solely to the effect of inflation.

DATES: *Effective Date:* This regulation becomes effective on February 22, 2002.

Applicability Dates: For the purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive Section 8(a) contracts, issued on or after February 22, 2002. For the purpose of noncompetitive Section 8(a) contracting actions, the new size standards are applicable to offers of requirements that are accepted by SBA on or after February 22, 2002. For purposes of eligibility for economic injury disaster loan assistance to small business concerns located in disaster areas declared as a result of the terrorist attacks on the World Trade Center, New York, New York and the Pentagon, the applicability date is September 11, 2001.

Comment Period: Comments must be received on or before February 22, 2002. Upon request, SBA will make all public comments available to any person or entity.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third St., SW., Mail Code 6530, Washington, DC 20416; or, via e-mail to *SIZESTANDARDS@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Inflationary Review

SBA is adding a provision to its size standards regulations requiring that at least once every five years it will assess the impact of inflation on its monetary-based size standards. These are size standards based on receipts, net income, or other monetary measures. Although the provision does not mandate that SBA adjust size standards for inflation, it does provide assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. If SBA decides not to make an inflation adjustment after a review, it will continue to monitor inflation on an annual basis until such time an adjustment is made. Afterwards, SBA will review inflation on a periodic basis, but at least once within five years.

As described in § 121.102(a), SBA examines a number of economic characteristics in developing size standards. Inflation is one of many considerations in this process. SBA does not believe it is appropriate to automatically adjust size standards for inflation since other factors influence the setting of size standards. For example, changes in industry characteristics or in SBA's policies may render an inflation adjustment unnecessary or inappropriate. Under this provision, if a significant amount of inflation occurs in the economy within a five-year period, SBA will consider an inflation adjustment on a more frequent basis. SBA invites the public to comment on this policy and to suggest alternative procedures.

Inflationary Adjustment

SBA is adjusting the monetary-based size standards for the effect of inflation in order to restore eligibility to firms that may have lost small business status due solely to the effect of inflation. While these adjustments are not done on a fixed schedule, prior adjustments occurred in 1994 (59 FR 16513, dated April 7, 1994), 1984 (49 FR 5024, dated February 9, 1984), and 1975 (40 FR 32824, as corrected by 40 FR 36310, dated August 5, 1975). The current adjustment is being made at this time because inflation has increased by 15.8% since 1994, which is sufficient to warrant an increase, and because SBA believes that adjustments should be made more frequently than once every ten years, as was the case with the last inflationary adjustment.

Small business size standards are based on the six-digit industry codes of the North American Industry Classification System (NAICS). In addition, SBA has several programs that have their own size standards (*e.g.*, Surety Bond Guaranteed Assistance, Sale of Government Property, etc.). The size standards that SBA is changing are those that are receipts based and those based upon other monetary measures.

Employee-based, production-based, and those established by legislation are unaffected by inflation, and thus, not part of this rulemaking. Those standards that have been changed since the last inflation adjustment in 1994 will be increased accordingly. However, some receipt-based standards that were recently increased will not be adjusted as the inflation effect has already been factored into the new size standard. Full details of this adjustment are contained in the table, at the end of the preamble, which lists the affected industries according to NAICS.

How Does SBA Adjust Size Standards for Inflation?

The methodology for adjusting the size standards for inflation was as follows:

1. Selection of an appropriate inflation indicator. We used the chain-type price index for gross domestic product (GDP) as published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), which is a broad measure of inflation for the economy as a whole, and is available on a quarterly basis. In the past, SBA used the implicit price deflator for GDP. Since that time the BEA has produced an improved price index, the chain-type price index for GDP, that more accurately reflects inflation. This type of index relies on annual price weights rather than on the fixed price weight that the implicit price deflator relied upon. For more information, see J. Steven Landefeld and Robert P. Parker's article "BEA's Chain Indexes, Time Series, and Measures of Long-Term Economic Growth" in the May 1997 issue of *Survey of Current Business*. This article may also be found at *http://www.bea.doc.gov/bea/an/0597od/maintext.htm*, or it may be obtained by calling the Government Printing Office at (202) 512–1800.

2. Selection of a base period. We selected the fourth quarter of 1993 as the base period since this was the ending period of the last inflation adjustment in 1994. The chain-type price index for GDP stood at 94.79 at that time.

3. Selection of an end period. We selected the third quarter of 2001 as the ending period for this inflation adjustment since it is the latest available quarterly data published by BEA. The chain-type price index for GDP Deflator stood at 109.8 at that time.

4. Calculation of inflation. Based on these price indices, inflation increased 15.8% between the base and ending periods [((109.8/94.79) − 1.00) × 100=15.8%].

5. Application of the inflation adjustment to the monetary-based size standards. We multiplied the current size standard by 1.158 and rounded to the closest $0.5M.

6. Which size standards and size eligibility criteria are not being changed?

Certain size standards and size eligibility criteria are not being changed in this rule. SBA's reasons are set forth in the chart below.

Industry	Reason not being changed
Agriculture, the Very Small Business Set-Aside program, and Small Business Investment Company Program's Smaller Enterprise size standard.	Set by statute.
Travel and Real Estate Agents, Cattle Feedlots, and Architects and Engineers (A&E) with size standards of $1.0M, $1.5M, and $4.0M, respectively.	A 15.8% and 2.9% (A&E) adjustment would be too small to warrant an increase. The A&E size standards were increased in June of 1999.
Eligibility criteria for small business receiving assistance from Small Business Investments Companies (SBIC) Program.	In 1994, the average net worth and net income criteria were increased threefold. Current size standards are inclusive for purposes of the SBIC Program and no further increase is deemed necessary at this time.

What Special Situations Exist Regarding the New Inflationary Adjustment?

The size standard for banks is expressed in terms of assets and is being set at $150 million. This adjustment represents more than a 15.8% increase. The current size standard of $100 million in assets was established in 1984 and was not adjusted in the 1994 inflation adjustment. The 1994 adjustment increased only the receipt based size standards. Monetary standards, other than receipts based, and program size standards were not adjusted at that time. This rule adjusts all monetary standards.

The Health Care Group's size standards were increased in December 2000; the Freight Forwarders size standards were increased in September 2000; and the Help Supply Services size standards were increased in July 2000. These changes, however, were not due to inflation but were based on the structure of these industries using data from 1992. Unlike other industries described in the table above, these industries were adjusted for inflation in 1994. A further increase is being adopted for inflation at this time in order to make these size standards current.

The Construction and Refuse Collection size standards were increased in June 2000 to account for inflation through the end of 1999. Since that time, an additional 4.3% inflation has occurred [the chain-type price index for GDP was 105.28 at the fourth quarter of 1999 ((109.8/105.28) − 1.00) × 100=1.043, or 4.3%]. To adjust all size standards to the same common period with respect to inflation, the Construction and Refuse Collection size standards are being adjusted by 4.3%. The Dredging size standard of $17 million, however, is not being adjusted since that size standard was based on an analysis of specific industry cost data and other industry considerations.

The size standard for sales of government property, currently at $2 million, is increasing to $6.0 million. This especially large increase is being made due to an earlier oversight, in that this size standard was not raised from $2 million for inflation in 1984 or 1994. Therefore it is being increased to $6.0 million to bring it up to the present-day equivalent of $2 million and the most common size standard for the non-manufacturing industries.

What Other SBA Programs or Activities, Not Defined by the NAICS System, Will Have Their Size Standards Adjusted for Inflation?

The size standards associated with the NAICS Codes are primarily used in connection with SBA's financial assistance programs and federal procurement programs. SBA and other federal agencies oversee small business programs that are not covered by the NAICS Codes or use NAICS size standards as an alternative to the program size standard. Therefore, SBA will also make inflation adjustments to those programs that have any monetary-

based size standards, except for the SBIC program as discussed above.

Program	CFR site	Inflation adjusted size standard		
		Current standard		New standard
504 Program	13 CFR 121.301(b)	$6.0M $2.0M	Net Worth Net Income	$7.0M $2.5M
Surety Bond Guarantee Assistance	13 CFR 121.301(d)	$5.0M	Average Annual Receipts	$6.0M
Sales of Government Property (Except, Timber Sales Program, the Special Salvage Timber Sales Program, the sale of Government petroleum coal, and uranium.).	13 CFR 121.502	$2.0M	Average Annual Receipts	$6.0M
		For concerns not primarily engaged in manufacturing (Manufacturing firms have an employee-based size standard)		
Stockpile Purchases	13 CFR 121.512	$42.0M	Average Annual Receipt	$48.5M

Justification for Publication as an Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations may arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have impacted U.S. businesses both in the declared disaster areas and across the nation. Most of the affected businesses qualify as small under existing SBA size standards and are eligible for SBA and other Federal assistance. However, some of the affected businesses had previously lost their small size status solely as a result of the inflation that has occurred since SBA last revised the size standards in 1994. A proposed inflationary adjustment to the size regulations to restore eligibility to those businesses was already under development at SBA when the tragic events of September 11, 2001, occurred. SBA now believes that any delay in the adoption of those inflationary adjustments could cause serious harm to those businesses.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans and other SBA assistance available to businesses that should be considered small, but that do not qualify under SBA's existing size standards. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before February 22, 2002. SBA may then consider these comments in making any necessary revisions to these regulations.

Pursuant to Public Law 107–117 (Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act), SBA has the authority to apply the size standards in this rule for purposes of eligibility for economic injury disaster loans to small businesses located in the disaster areas declared as a result of the terrorist attacks of September 11, 2001. Accordingly, for that purpose only, SBA is applying these size standards as if they were in effect on September 11, 2001.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) reviewed this rule as a "significant regulatory action" under section 3(f) under Executive Order 12866.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

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 responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule does not impose any new information collection requirements from SBA which require the approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this rule addressing

the reasons and objectives of the rule; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives considered by SBA.

(1) What Is Reason for This Action?

As discussed in the supplemental information, the purpose of this rule is to restore the small business eligibility of businesses who have grown above the size standard due to inflation rather than to an expansion of business activity. A review of the latest available inflation indices show inflation that has increased a sufficient amount to warrant an increase to the current receipt-based size standards.

(2) What Are the Objectives and Legal Basis for the Rule?

The revision to the receipt-based size standards for inflation more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that there will be approximately 8,600 newly designated small business, distributed as follows by NAICS Sectors and Subsectors:

ESTIMATE OF FIRMS GAINING SMALL BUSINESS STATUS

	Number of firms	Associated annual sales
• Retail		
Sectors 44–45	2,800	$17 billion.
• Services		
Sectors 51, 52, 54, 55, 61, 62, 71, 72, 81, and Subsectors 531, 532, 561	4,000	$22 billion.
• Finance, Insurance and Real Estate		
Sectors 52–53	600	$3 billion.
• Transportation & Utilities		
Sectors 22 & 48	450	$3 billion.
• Construction and Refuse		
Sector 23 & Subsector 562	760	$10 billion.
Total	8,610	$55 billion.

Source: *1997 Economic Census*, U.S. Census Bureau, Special Tabulation for SBA. Sales estimates restated to 2000 dollars.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is estimated to be about two-tenths of one percent. The special tabulation of the 1997 Economic Census for SBA reports 5,082,970 total firms in the U.S. economy as defined by this census. We estimate that 98.4% of all businesses in the U.S. are currently defined as small under the existing size standards. Under the rule, this will increase to 98.6%. The percentage increase of annual sales in the U.S. economy attributed to these new small businesses is likely to be approximately seven-tenths of one percent. This will be applied to a base of 28.6%. Thus under this proposal the percent of sales attributed to firms defined as small businesses in the U.S. is likely to increase to 29.3%.

Description of Potential Benefits of the Rule: The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone).

SBA estimates that approximately $46.2 million of additional Federal contracts will be awarded to firms becoming newly designated small businesses. As stated above, the percentage increase of annual sales attributed to these new small businesses is likely to be approximately seven-tenths of one percent. SBA applied this factor to the Fiscal Year 1999 total small business prime contractor initial awards which totaled $6.6 billion [$6.6B x .007 (.7 of 1%) = $46.2M].

We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different sized firms.

Under the SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19% of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-based size standards.

Considering that the average size of firms gaining small business status will be $6 million, demand for assistance will likely be less than the overall participation rate for SBA loans among firms of all sizes. In any given year less than 1% of all small businesses receive SBA financing. Since larger firms are less likely to seek SBA financial assistance, we believe that no more than one-half of 1% of the 8,610 newly designated small businesses would seek SBA assistance. SBA estimates that approximately 45 out of the 8,610 firms would seek SBA financing. SBA financial assistance recipients of this size on average obtain assistance worth $375,000, so the impact in terms of new loans generated is estimated to be $17 million per year.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they

neither regulate nor control business behavior.

(5) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With This Rule?

This rule overlaps other Federal rules that use SBA's size standards to define a small business. Under § 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(6) What Alternatives Did SBA Consider?

SBA considered two alternatives to this rule. First, to wait until inflation has increased a greater amount before proposing an adjustment to receipt-based size standards. Previous inflation adjustments ranged between 48 percent to 100 percent. SBA believes that more frequent adjustments are necessary since smaller amounts of inflation can change the small business eligibility of a large number of businesses.

Second, SBA considered a policy of automatically adjusting size standards for inflation on a fixed schedule. SBA believes inflation must be closely monitored to assess the impact of inflation on size standards. Automatic adjustments may lead to inappropriate changes to size standards and prevent the Agency from taking into consideration other factors that bear on the review of size standards, such as changes in industry structure or Administration policies. Furthermore, an automatic adjustment could require SBA to make insignificant changes (*i.e.*, 1 percent) or to wait a longer period of time than necessary to adjust size standards if inflation rapidly increases.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend § 121.102 as follows:

a. Redesignate the current paragraph (c) as (d).

b. Add new paragraph (c) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(c) As part of its review of size standards, SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (*e.g.*, receipts, net income, assets) at least once every five years and submit a report to the Administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based size standards, it will issue a proposed rule to increase size standards.

* * * * *

3. In § 121.201, revise the referenced NAICS Codes and size standards in the table "Size Standards by NAICS Industry" under Sectors 11, 21 through 23, 44–45, 48–49, 51 through 56, 61, 62, 71, 72, and 81 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
*	* * * * * *	*
	Sector 11— Agriculture, Forestry, Fishing, and Hunting	
	Subsector 112—Animal Production	
*	* * * * * *	*
112310	Chicken Egg Production	$10.5
*	* * * * * *	*
	Subsector 113—Forestry and Logging	
113110	Timber Tract Operations	$6.0
113210	Forest Nurseries and Gathering of Forest Products	$6.0
*	* * * * * *	*
	Subsector 114—Fishing, Hunting and Trapping	
114111	Finfish Fishing	$3.5

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
114112	Shellfish Fishing	$3.5
114119	Other Marine Fishing	$3.5
114210	Hunting and Trapping	$3.5
*	* * * * * * *	
	Subsector 115—Support Activities for Agriculture and Forestry	
115111	Cotton Ginning	$6.0
115112	Soil Preparation, Planting, and Cultivating	$6.0
115113	Crop Harvesting, Primarily by Machine	$6.0
115114	Postharvest Crop Activities (except Cotton Ginning)	$6.0
115115	Farm Labor Contractors and Crew Leaders	$6.0
115116	Farm Management Services	$6.0
115210	Support Activities for Animal Production	$6.0
115310	Support Activities for Forestry	$6.0
	Sector 21—Mining	
*	* * * * * * *	
	Subsector 213—Support Activities for Mining	
*	* * * * * * *	
213112	Support Activities for Oil and Gas Operations	$6.0
213113	Support Activities for Coal Mining	$6.0
213114	Support Activities for Metal Mining	$6.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$6.0
	Sector 22—Utilities	
	Subsector 221—Utilities	
*	* * * * * * *	
221310	Water Supply and Irrigation Systems	$6.0
221320	Sewage Treatment Facilities	$6.0
221330	Steam and Air-Conditioning Supply	$10.5
	Sector 23—Construction	
	Subsector 233—Building, Developing and General Contracting	
233110	Land Subdivision and Land Development	$6.0
233210	Single Family Housing Construction	$28.5
233220	Multifamily Housing Construction	$28.5
233310	Manufacturing and Industrial Building Construction	$28.5
233320	Commercial and Institutional Building Construction	$28.5
	Subsector 234—Heavy Construction	
234110	Highway and Street Construction	$28.5
234120	Bridge and Tunnel Construction	$28.5
234910	Water, Sewer, and Pipeline Construction	$28.5
234920	Power and Communication Transmission Line Construction	$28.5
234930	Industrial Nonbuilding Structure Construction	$28.5
234990	All other Heavy Construction	$28.5
Except	Dredging and Surface Cleanup Activities	$17.0
	Subsector 235—Special Trade Contractors	
235110	Plumbing, Heating and Air-Conditioning Contractors	$12.0
235210	Painting and Wall Covering Contractors	$12.0
235310	Electrical Contractors	$12.0
235410	Masonry and Stone Contractors	$12.0
235420	Drywall, Plastering, Acoustical and Insulation Contractors	$12.0
235430	Tile, Marble, Terrazzo and Mosaic Contractors	$12.0
235510	Carpentry Contractors	$12.0
235520	Floor Laying and Other Floor Contractors	$12.0
235610	Roofing, Siding and Sheet Metal Contractors	$12.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
235710	Concrete Contractors	$12.0
235810	Water Well Drilling Contractors	$12.0
235910	Structural Steel Erection Contractors	$12.0
235920	Excavation Contractors	$12.0
235940	Wrecking and Demolition Contractors.	
235950	Building Equipment Other Machinery Installation Contractors	$12.0
235990	All Other Special Trade Contractors	$12.0
Except	Base Housing Maintenance	[13] $12.0
*	* * * * * * *	
	Sector 44–45—Retail Trade	
	(Not Applicable to Government Procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Subsector 441—Motor Vehicle and Parts Dealers	
441110	New Car Dealers	$24.5
441120	Used Car Dealers	$19.5
441210	Recreational Vehicle Dealers	$6.0
441221	Motorcycle Dealers	$6.0
441222	Boat Dealers	$6.0
441229	All Other Motor Vehicle Dealers	$6.0
Except	Aircraft Dealers, Retail	$8.5
441310	Automotive Parts and Accessories Stores	$6.0
441320	Tire Dealers	$6.0
	Subsector 441—Furniture and Home Furnishing Stores	
442110	Furniture Stores	$6.0
442210	Floor Covering Stores	$6.0
442291	Window Treatment Stores	$6.0
442299	All Other Home Furnishings Stores	$6.0
	Subsector 442—Electronics and Appliances Stores	
443111	Household Appliance Stores	$7.5
443112	Radio, Television and Other Electronics Stores	$7.5
443120	Computer and Software Stores	$7.5
443130	Camera and Photographic Supplies Stores	$6.0
	Subsector 444—Building Material and Garden Equipment and Supplies Dealers	
444110	Home Centers	$6.0
444120	Paint and Wallpaper Stores	$6.0
444130	Hardware Stores	$6.0
444190	Other Building Material Dealers	$6.0
444210	Outdoor Power Equipment Stores	$6.0
444220	Nursery and Garden Centers	$6.0
	Subsector 445—Food and Beverage Stores	
445110	Supermarkets and Other Grocery (except Convenience) Stores	$23.0
445120	Convenience Stores	$23.0
445210	Meat Markets	$6.0
445220	Fish and Seafood Markets	$6.0
445230	Fruit and Vegetable Markets	$6.0
445291	Baked Goods Stores	$6.0
445292	Confectionery and Nut Stores	$6.0
445299	All Other Specialty Food Stores	$6.0
445310	Beer, Wine and Liquor Stores	$6.0
	Subsector 446—Health and Personal Care Stores	
446110	Pharmacies and Drug Stores	$6.0
446120	Cosmetics, Beauty Supplies and Perfume Stores	$6.0
446130	Optical Goods Stores	$6.0
446191	Food (Health) Supplement Stores	$6.0
446199	All Other Health and Personal Care Stores	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Subsector 447—Gasoline Stations	
447110	Gasoline Stations with Convenience Stores	$23.0
447190	Other Gasoline Stations	$7.5
	Subsector 448—Clothing and Clothing Accessories Stores	
448110	Men's Clothing Stores	$7.5
448120	Women's Clothing Stores	$7.5
448130	Children's and Infants' Clothing Stores	$6.0
448140	Family Clothing Stores	$7.5
448150	Clothing Accessories Stores	$6.0
448190	Other Clothing Stores	$6.0
448210	Shoe Stores	$7.5
448310	Jewelry Stores	$6.0
448320	Luggage and Leather Goods Stores	$6.0
	Subsector 451—Sporting Goods, Hobby, Book, and Music Stores	
451110	Sporting Goods Stores	$6.0
451120	Hobby, Toy and Game Stores	$6.0
451130	Sewing, Needlework and Piece Goods Stores	$6.0
451140	Musical Instrument and Supplies Stores	$6.0
451211	Book Stores	$6.0
451212	News Dealers and Newsstands	$6.0
451220	Prerecorded Tape, Compact Disc and Record Stores	$6.0
	Subsector 452—General Merchandise Stores	
452110	Department Stores	$23.0
452910	Warehouse Clubs and Superstores	$23.0
452990	All Other General Merchandise Stores	$9.5
	Subsector 453—Miscellaneous Store Retailers	
453110	Florists	$6.0
453210	Office Supplies and Stationery Stores	$6.0
453220	Gift, Novelty and Souvenir Stores	$6.0
453310	Used Merchandise Stores	$6.0
453910	Pet and Pet Supplies Stores	$6.0
453920	Art Dealers	$6.0
453930	Manufactured (Mobile) Home Dealers	$11.0
453991	Tobacco Stores	$6.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$6.0
454110	Electronic Shopping and Mail-Order Houses	$21.0
454210	Vending Machine Operators	$6.0
454311	Heating Oil Dealers	$10.5
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$6.0
454319	Other Fuel Dealers	$6.0
454390	Other Direct Selling Establishments	$6.0
*	* * * * * * *	
	Sectors 48–49—Transportation and Warehousing	
*	* * * * * * *	
	Subsector 481—Air Transportation	
*	* * * * * * *	
Except	Offshore Marine Air Transportation Services	$23.5
*	* * * * * * *	
Except	Offshore Marine Air Transportation Services	$23.5
481219	Other Nonscheduled Air Transportation	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
*	* * * * * * *	*
	Subsector 484—Truck Transportation	
484110	General Freight Trucking, Local	$21.5
484121	General Freight Trucking, Long-Distance, Truckload	$21.5
484122	General Freight Trucking, Long-Distance, Less Than.Truckload	$21.5
484210	Used Household and Office Goods Moving	$21.5
484220	Specialized Freight (except Used Goods) Trucking, Local	$21.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$21.5
	Subsector 485—Transit and Ground Passenger Transportation	
485111	Mixed Mode Transit Systems	$6.0
485112	Commuter Rail Systems	$6.0
485113	Bus and Other Motor Vehicle Transit Systems	$6.0
485119	Other Urban Transit Systems	$6.0
485210	Interurban and Rural Bus Transportation	$6.0
485310	Taxi Service	$6.0
485320	Limousine Service	$6.0
485410	School and Employee Bus Transportation	$6.0
485510	Charter Bus Industry	$6.0
485991	Special Needs Transportation	$6.0
485999	All Other Transit and Ground Passenger Transportation	$6.0
	Subsector 486—Pipeline Transportation	
*	* * * * * * *	*
486210	Pipeline Transportation of Natural Gas	$6.0
*	* * * * * * *	*
486990	All Other Pipeline Transportation	$29.0
	Subsector 487—Scenic and Sightseeing Transportation	
487110	Scenic and Sightseeing Transportation, Land	$6.0
487210	Scenic and Sightseeing Transportation, Water	$6.0
487990	Scenic and Sightseeing Transportation, Other	$6.0
	Subsector 488—Support Activities for Transportation	
488111	Air Traffic Control	$6.0
488119	Other Airport Operations	$6.0
488190	Other Support Activities for Air Transportation	$6.0
488210	Support Activities for Rail Transportation	$6.0
488310	Port and Harbor Operations	$21.5
488320	Marine Cargo Handling	$21.5
488330	Navigational Services to Shipping	$6.0
488390	Other Support Activities for Water Transportation	$6.0
488410	Motor Vehicle Towing	$6.0
488490	Other Support Activities for Road Transportation	$6.0
488510	Freight Transportation Arrangement	[10]$6.0
Except	Non-Vessel Owning Common Carriers and Household Goods Forwarders	$21.5
488991	Packing and Crating	$21.5
488999	All Other Support Activities for Transportation	$6.0
	Subsector 491—Postal Service	
491110	Postal Service	$6.0
	Subsector 492—Couriers and Messengers	
*	* * * * * * *	*
492210	Local Messengers and Local Delivery	$21.5
	Subsector 493—Warehousing and Storage	
493110	General Warehousing and Storage	$21.5

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
493120	Refrigerated Warehousing and Storage	$21.5
493130	Farm Product Warehousing and Storage	$21.5
493190	Other Warehousing and Storage	$21.5
	Sector 51—Information	
	Subsector 511—Publishing Industries	
*	* * * * * * *	
511210	Software Publishers	$21.0
	Subsector 512—Motion Picture and Sound Recording Industries	
512110	Motion Picture and Video Production	$25.0
512120	Motion Picture and Video Distribution	$25.0
512131	Motion Picture Theaters (except Drive-Ins)	$6.0
512132	Drive-In Motion Picture Theaters	$6.0
512191	Teleproduction and Other Post-Production Services	$25.0
512199	Other Motion Picture and Video Industries	$6.0
512210	Record Production	$6.0
*	* * * * * * *	
512240	Sound Recording Studios	$6.0
512290	Other Sound Recording Industries	$6.0
	Subsector 513—Broadcasting and Telecommunications	
513111	Radio Networks	$6.0
513112	Radio Stations	$6.0
513120	Television Broadcasting	$12.0
513210	Cable Networks	$12.5
513220	Cable and Other Program Distribution	$12.5
*	* * * * * * *	
513340	Satellite Telecommunications	$12.5
513390	Other Telecommunications	$12.5
	Subsector 514—Information Services and Data Processing Services	
514110	News Syndicates	$6.0
514120	Libraries and Archives	$6.0
514191	On-Line Information Services	$21.0
514199	All Other Information Services	$6.0
514210	Data Processing Services	$21.0
	Sector 52—Finance and Insurance	
	Subsector 522—Credit Intermediation and Related Activities	
522110	Commercial Banking	$150 mil in Assets [8]
522120	Saving Institutions	$150 mil in Assets [8]
522130	Credit Unions	$150 mil in Assets [8]
522190	Other Depository Credit Intermediation	$150 mil in Assets [8]
522210	Credit Card Issuing	$150 mil in Assets [8]
522220	Sales Financing	$6.0
522291	Consumer Lending	$6.0
522292	Real Estate Credit	$6.0
522293	International Trade Financing	$150 mil in Assets [8]
522294	Secondary Market Financing	$6.0
522298	All Other Non-Depository Credit Intermediation	$6.0
522310	Mortgage and Nonmortgage Loan Brokers	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$6.0
522390	Other Activities Related to Credit Intermediation	$6.0
	Subsector 523—Financial Investments and Related Activities	
523110	Investment Banking and Securities Dealing	$6.0
523120	Securities Brokerage	$6.0
523130	Commodity Contracts Dealing	$6.0
523140	Commodity Contracts Brokerage	$6.0
523210	Securities and Commodity Exchanges	$6.0
523910	Miscellaneous Intermediation	$6.0
523920	Portfolio Management	$6.0
523930	Investment Advice	$6.0
523991	Trust, Fiduciary and Custody Activities	$6.0
523999	Miscellaneous Financial Investment Activities	$6.0
	Subsector 524—Insurance Carriers and Related Activities	
524113	Direct Life Insurance Carriers	$6.0
524114	Direct Health and Medical Insurance Carriers	$6.0
*	* * * * * * *	
524127	Direct Title Insurance Carriers	$6.0
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$6.0
524130	Reinsurance Carriers	$6.0
524210	Insurance Agencies and Brokerages	$6.0
524291	Claims Adjusting	$6.0
524292	Third Party Administration of Insurance and Pension Funds	$6.0
524298	All Other Insurance Related Activities	$6.0
	Subsector 525—Funds, Trusts and Other Financial Vehicles	
525110	Pension Funds	$6.0
525120	Health and Welfare Funds	$6.0
525190	Other Insurance Funds	$6.0
525910	Open-End Investment Funds	$6.0
525920	Trusts, Estates, and Agency Accounts	$6.0
525930	Real Estate Investment Trusts	$6.0
525990	Other Financial Vehicles	$6.0
	Sector 53—Real Estate and Rental and Leasing	
	Subsector 531—Real Estate	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$6.0
531130	Lessors of Miniwarehouses and Self Storage Units	$21.5
531190	Lessors of Other Real Estate Property	$6.0
Except	Leasing of Building Space to Federal Government by Owners	[9] $17.5
*	* * * * * * *	
	Subsector 532—Rental and Leasing Services	
532111	Passenger Car Rental	$21.5
532112	Passenger Car Leasing	$21.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	$21.5
532210	Consumer Electronics and Appliances Rental	$6.0
532220	Formal Wear and Costume Rental	$6.0
532230	Video Tape and Disc Rental	$6.0
532291	Home Health Equipment Rental	$6.0
532292	Recreational Goods Rental	$6.0
532299	All Other Consumer Goods Rental	$6.0
532310	General Rental Centers	$6.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$6.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	$6.0
532420	Office Machinery and Equipment Rental and Leasing	$21.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$6.0
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$6.0
	Sector 54—Professional, Scientific and Technical Services	
	Subsector 541—Professional, Scientific and Technical Services	
541110	Offices of Lawyers	$6.0
541191	Title Abstract and Settlement Offices	$6.0
541199	All Other Legal Services	$6.0
541211	Offices of Certified Public Accountants	$7.0
541213	Tax Preparation Services	$6.0
541214	Payroll Services	$7.0
541219	Other Accounting Services	$7.0
*	* * * * * * *	
541320	Landscape Architectural Services	$6.0
541330	Engineering Services	$4.0
Except	Military and Aerospace Equipment and Military Weapons	$23.0
Except	Contracts and Subcontracts for Engineering Services Awarded under The National Energy Act of 1992	$23.0
Except	Marine and Aerospace Equipment and Military Weapons	$15.5
541340	Drafting Services	$6.0
Except	Map Drafting	$4.0
541350	Building Inspection Services	$6.0
541360	Geophysical Surveying and Mapping Services	$4.0
541370	Surveying and Mapping (except Geophysical) Services	$4.0
541380	Testing Laboratories	$6.0
541410	Interior Design Services	$6.0
541420	Industrial Design Services	$6.0
541430	Graphic Design Services	$6.0
541490	Other Specialized Design Services	$6.0
541511	Custom Computer Programming Services	$21.0
541512	Computer Systems Design Services	$21.0
541513	Computer Facilities Management Services	$21.0
541519	Other Computer Related Services	$21.0
541611	Administrative Management and General Management Consulting Services	$6.0
541612	Human Resources and Executive Search Consulting Services	$6.0
541613	Marketing Consulting Services	$6.0
541614	Process, Physical distribution and Logistics Consulting Services	$6.0
541618	Other Management Consulting Services	$6.0
541620	Environmental Consulting Services	$6.0
541690	Other Scientific and Technical Consulting Services	$6.0
*	* * * * * * *	
541720	Research and Development in the Social Sciences and Humanities	$6.0
541810	Advertising Agencies	[10] $6.0
541820	Public Relations Agencies	$6.0
541830	Media Buying Agencies	$6.0
541840	Media Representatives	$6.0
541850	Display Advertising	$6.0
541860	Direct Mail Advertising	$6.0
541870	Advertising Material Distribution Services	$6.0
541890	Other Services Related to Advertising	$6.0
541910	Marketing Research and Public Opinion Polling	$6.0
541921	Photography Studios, Portrait	$6.0
541922	Commercial Photography	$6.0
541930	Translation and Interpretation Services	$6.0
541940	Veterinary Services	$6.0
541990	All Other Professional, Scientific and Technical Services	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Sector 55—Management of Companies and Enterprises	
	Subsector 551—Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies	$6.0
551112	Offices of Other Holding Companies	$6.0
	Sector 56—Administrative and Support, Waste Management and Remediation Services	
	Subsector 561—Administrative and Support Services	
561110	Office Administrative Services	$6.0
561210	Facilities Support Services	[12] $6.0
Except	Base Maintenance	[13] $23.0
561310	Employment Placement Agencies	$6.0
561320	Temporary Help Services	$11.5
561330	Employee Leasing Services	$11.5
561410	Document Preparation Services	$6.0
561421	Telephone Answering Services	$6.0
561422	Telemarking Bureaus	$6.0
561431	Private Mail Centers	$6.0
561439	Other Business Service Centers (including Copy Shops)	$6.0
561440	Collection Agencies	$6.0
561450	Credit Bureaus	$6.0
561491	Repossession Services	$6.0
561492	Court Reporting and Stenotype Services	$6.0
561499	All Other Business Support Services	$6.0
561510	Travel Agencies	[10] $1.0
561520	Tour Operators	$6.0
561591	Convention and Visitors Bureaus	$6.0
561599	All Other Travel Arrangement and Reservation Services	$6.0
561611	Investigation Services	$10.5
561612	Security Guards and Patrol Services	$10.5
561613	Armored Car Services	$10.5
561621	Security Systems Services (except Locksmiths)	$10.5
561622	Locksmiths	$6.0
561710	Exterminating and Pest Control Services	$6.0
561720	Janitorial Services	$14.0
561730	Landscaping Services	$6.0
561740	Carpet and Upholstery Cleaning Services	$4.0
561790	Other Services to Buildings and Dwellings	$6.0
561910	Packaging and Labeling Services	$6.0
561920	Convention and Trade Show Organizers	[10] $6.0
561990	All Other Support Services	$6.0
	Subsector 562—Waste Management and Remediation Services	
562111	Solid Waste Collection	$10.5
562112	Hazardous Waste Collection	$10.5
562119	Other Waste Collection	$10.5
562211	Hazardous Waste Treatment and Disposal	$10.5
562212	Solid Waste Landfill	$10.5
562213	Solid Waste Combustors and Incinerators	$10.5
562219	Other Nonhazardous Waste Treatment and Disposal	$10.5
562910	Remediation Services	$12.0
*	* * * * * * *	
562920	Materials Recovery Facilities	$10.5
562991	Septic Tank and Related Services	$6.0
562998	All Other Miscellaneous Waste Management Services	$6.0
	Sector 61—Educational Services	
	Subsector 611—Educational Services	
611110	Elementary and Secondary Schools	$6.0
611210	Junior Colleges	$6.0
611310	Colleges, Universities and Professional Schools	$6.0
611410	Business and Secretarial Schools	$6.0
611420	Computer Training	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
611430	Professional and Management Development Training	$6.0
611511	Cosmetology and Barber Schools	$6.0
611512	Flight Training	$21.5
611513	Apprenticeship Training	$6.0
611519	Other Technical and Trade Schools	$6.0
611610	Fine Arts Schools	$6.0
611620	Sports and Recreation Instruction	$6.0
611630	Language School	$6.0
611691	Exam Preparation and Tutoring	$6.0
611692	Automobile Driving School	$6.0
611699	All Other Miscellaneous Schools and Instruction	$6.0
611710	Educational Support Services	$6.0
	Sector 62—Health Care and Social Assistance	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$8.5
621112	Offices of Physicians, Mental Health Specialists	$8.5
621210	Offices of Dentists	$6.0
621310	Offices of Chiropractors	$6.0
621320	Offices of Optometrists	$6.0
621330	Offices of Mental Health Practitioners (except Physicians)	$6.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$6.0
621391	Offices of Podiatrists	$6.0
621399	Offices of All Other Miscellaneous Health Practitioners	$6.0
621410	Family Planning Centers	$8.5
621420	Outpatient Mental Health and Substance Abuse Centers	$8.5
621491	HMO Medical Centers	$8.5
621492	Kidney Dialysis Centers	$29.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$8.5
621498	All Other Outpatient Care Centers	$8.5
621511	Medical Laboratories	$11.5
621512	Diagnostic Imaging Centers	$11.5
621610	Home Health Care Services	$11.5
621910	Ambulance Services	$6.0
621991	Blood and Organ Banks	$8.5
621999	All Other Miscellaneous Ambulatory Health Care Services	$8.5
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$29.0
622210	Psychiatric and Substance Abuse Hospitals	$29.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$29.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$11.5
623210	Residential Mental Retardation Facilities	$8.5
623220	Residential Mental Health and Substance Abuse Facilities	$6.0
623311	Continuing Care Retirement Communities	$11.5
623312	Homes for the Elderly	$6.0
623990	Other Residential Care Facilities	$6.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$6.0
624120	Services for the Elderly and Persons with Disabilities	$6.0
624190	Other Individual and Family Services	$6.0
624210	Community Food Services	$6.0
624221	Temporary Shelters	$6.0
624229	Other Community Housing Services	$6.0
624230	Emergency and Other Relief Services	$6.0
624310	Vocational Rehabilitation Services	$6.0
624410	Child Day Care Services	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Sector 71—Arts, Entertainment and Recreation	
	Subsector 711—Performing Arts, Spectator Sports and Related Industries	
711110	Theater Companies and Dinner Theaters	$6.0
711120	Dance Companies	$6.0
711130	Musical Groups and Artists	$6.0
711190	Other Performing Arts Companies	$6.0
711211	Sports Teams and Clubs	$6.0
711212	Race Tracks	$6.0
711219	Other Spectator Sports	$6.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$6.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$6.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$6.0
711510	Independent Artists, Writers, and Performers	$6.0
	Subsector 712—Museums, Historical Sites and Similar Institutions	
712110	Museums	$6.0
712120	Historical Sites	$6.0
712130	Zoos and Botanical Gardens	$6.0
712190	Nature Parks and Other Similar Institutions	$6.0
	Subsector 713—Amusement, Gambling and Recreation Industries	
713110	Amusement and Theme Parks	$6.0
713120	Amusement Arcades	$6.0
713210	Casinos (except Casino Hotels)	$6.0
713290	Other Gambling Industries	$6.0
713910	Golf Courses and Country Clubs	$6.0
713920	Skiing Facilities	$6.0
713930	Marinas	$6.0
713940	Fitness and Recreational Sports Centers	$6.0
713950	Bowling Centers	$6.0
713990	All Other Amusement and Recreation Industries	$6.0
	Sector 72—Accommodation and Food Services	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$6.0
721120	Casino Hotels	$6.0
721191	Bed and Breakfast Inns	$6.0
721199	All Other Traveler Accommodation	$6.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$6.0
721214	Recreational and Vacation Camps (except Campgrounds)	$6.0
721310	Rooming and Boarding Houses	$6.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$6.0
722211	Limited-Service Restaurants	$6.0
722212	Cafeterias	$6.0
722213	Snack and Nonalcoholic Beverage Bars	$6.0
722310	Food Service Contractors	$17.5
722320	Caterers	$6.0
722330	Mobile Food Services	$6.0
722410	Drinking Places (Alcoholic Beverages)	$6.0
	Sector 81—Other Services	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$6.0
811112	Automotive Exhaust System Repair	$6.0
811113	Automotive Transmission Repair	$6.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.0
811121	Automotive Body, Paint and Interior Repair and Maintenance	$6.0
811122	Automotive Glass Replacement Shops	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
811191	Automotive Oil Change and Lubrication Shops	$6.0
811192	Car Washes	$6.0
811198	All Other Automotive Repair and Maintenance	$6.0
811211	Consumer Electronics Repair and Maintenance	$6.0
811212	Computer and Office Machine Repair and Maintenance	$21.0
811213	Communication Equipment Repair and Maintenance	$6.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	$6.0
811411	Home and Garden Equipment Repair and Maintenance	$6.0
811412	Appliance Repair and Maintenance	$6.0
811420	Reupholstery and Furniture Repair	$6.0
811430	Footwear and Leather Goods Repair.	$6.0
811490	Other Personal and Household Goods Repair and Maintenance	$6.0
	Subsector 812—Personal and Laundry Services	
812111	Barber Shops	$6.0
812112	Beauty Salons	$6.0
812113	Nail Salons	$6.0
812191	Diet and Weight Reducing Centers	$6.0
812199	Other Personal Care Services	$6.0
812210	Funeral Homes and Funeral Services	$6.0
812220	Cemeteries and Crematories	$6.0
812310	Coin-Operated Laundries and Drycleaners	$6.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$4.0
812331	Linen Supply	$12.0
812332	Industrial Launderers	$12.0
812910	Pet Care (except Veterinary) Services	$6.0
812921	Photo Finishing Laboratories (except One-Hour)	$6.0
812922	One-Hour Photo Finishing	$6.0
812930	Parking Lots and Garages	$6.0
812990	All Other Personal Services	$6.0
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations	
813110	Religious Organizations	$6.0
813211	Grantmaking Foundations	$6.0
813212	Voluntary Health Organizations	$6.0
813219	Other Grantmaking and Giving Services	$6.0
813311	Human Rights Organizations	$6.0
813312	Environment, Conservation and Wildlife Organizations	$6.0
813319	Other Social Advocacy Organizations	$6.0
813410	Civic and Social Organizations	$6.0
813910	Business Associations	$6.0
813920	Professional Organizations	$6.0
813930	Labor Unions and Similar Labor Organizations	$6.0
813940	Political Organizations	$6.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$6.0

Footnotes

[9] *NAICS code 531190*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $17.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

* * * * * * * *

[15] *Subsector 483—Water Transportation—Offshore Marine Services:* The applicable size standard shall be $23.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

* * * * * * * *

§ 121.301 [Amended]

4. Amend § 121.301 as follows:

a. In paragraph (b)(2), remove "$6 million" and add in its place "$7 million," and "$2 million" and add in its place "$2.5 million," respectively.

b. In paragraph (d)(1), remove "$5.0 million" and add in its place "$6.0 million."

§ 121.502 [Amended]

5. In § 121.502(a)(2), remove "$2 million" and add in its place "$6.0 million."

§ 121.512 [Amended]

6. In § 121.512(b), remove "$42 million" and add in its place "$48.5 million."

Dated: January 3, 2002.
Hector V. Barreto,
Administrator.
[FR Doc. 02–1312 Filed 1–22–02; 8:45 am]
BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45291; File No. S7–02–02]

Amendments to Rule 31–1, Securities Transactions Exempt From Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is amending the rule that provides an exemption from section 31(c) of the Securities Exchange Act of 1934 ("Act") for over-the-counter ("OTC") transactions in OTC securities that are subject to unlisted trading privileges on a national securities exchange. One subparagraph of the rule has become obsolete and unnecessary due to the enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine England, Assistant Director, 202–942–0155, or Joseph Morra, Special Counsel, 202–942–0781, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Discussion

Subparagraph (b) of Rule 31–1 [1] under the Act is being rescinded. At the time this subparagraph was adopted, an exemption from section 31(c) of the Act was necessary to ensure that OTC transactions in OTC securities that were subject to unlisted trading privileges on a national securities exchange ("OTC–UTP Transactions") were not subject to dual charges under both sections 31(c) and (d) of the Act. With passage of the Fee Relief Act, former sections 31(c) and (d) of the Act were combined into a new Section 31(c).[2] Therefore, there is no longer a need for the exemption created by subparagraph (b) of Rule 31–1. The Commission also is making technical conforming changes to Rule 31–1 to renumber the subparagraphs and to reflect the exception in the Fee Relief Act for options on securities indexes (other than narrow-based security indexes).

Section 553(b) of the Administrative Procedure Act [3] generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [4] The Commission finds good cause to forego notice and comment procedures for the rule amendments being adopted today.

The President signed the Fee Relief Act on January 16, 2002. If the Commission does not rescind paragraph (b) of Rule 31–1 effective as of January 16, 2002, the intent of Congress in passing the Fee Relief Act could be frustrated. In addition, persons subject to section 31 of the Act may be confused as to whether OTC–UTP Transactions remain subject to fees under section 31.[5]

Specifically, as noted above, paragraph (b) of existing Rule 31–1 exempts OTC–UTP Transactions from the fee provisions of section 31(c) of the Act.[6] The purpose of the rule was to clarify that such transactions were not subject to dual charges under both former sections 31(c) and (d). OTC–UTP Transactions, however, remained subject to the fee provisions of former section 31(d) of the Act. The Fee Relief Act combined former sections 31(c) and (d) of the Act into a new section 31(c) (which encompasses all transactions formerly covered by former sections 31(c) and (d)). If paragraph (b) of existing Rule 31–1 were to remain in effect, affected persons might conclude that OTC–UTP Transactions are now exempt from section 31 fees altogether. Neither Congress, in enacting the Fee Relief Act, nor the Commission, in promulgating Rule 31–1, intended to exempt such transactions from the fee provisions of section 31. Rescinding paragraph (b) of Rule 31–1 effective immediately would preserve the intent of Congress in enacting the Fee Relief Act and avoid any confusion by persons affected by the legislation.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[7] However, an agency may forego the 30-day requirement if it finds good cause for doing so.[8] For the same reasons as it is waiving the notice and comment period, the Commission finds good cause to waive the 30-day pre-effective requirement.

II. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [9] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. As noted above, in amending Rule 31–1 the Commission is merely conforming the rule to recently enacted legislation. Moreover, adoption of the amendment to Rule 31–1 will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Regulatory Flexibility Act [10] is not applicable to the revisions to Rule 31–1. The Regulatory Flexibility Act's flexibility analysis requirements are limited to rulemaking for which the Commission would be required by the Administrative Procedure Act to publish general notice of proposed rulemaking.[11]

The Paperwork Reduction Act does not apply because the proposed amendments do not impose record keeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

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[1] 17 CFR 240.31–1(b).

[2] New section (c) applies to off-exchange trades of exchange registered and last-sale reported securities.

[3] 5 U.S.C. 553(b).

[4] *Id.*

[5] The Fee Relief Act provides that changes to section 31 of the Act (except for the immediate fee reduction in section 2 of the Fee Relief Act) are effective October 1, 2001. While we are rescinding paragraph (b) of Rule 31–1 effective as of January 16, 2002, the date the President signed the Fee Relief Act into law, the Commission does not believe that it would be consistent with the intent of the Fee Relief Act to rely on paragraph (b) of Rule 31–1 (and thereby seek to avoid paying Section 31 fees on OTC–UTP Transactions) for the period from the effective date of the Fee Relief Act (October 1, 2001) to the effective date of our rescission of paragraph (b) of Rule 31–1. As a result, Section 31 fees will continue to apply to OTC–UTP transactions from the effective date of the Fee Relief Act.

[6] *See* Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590, 68591 n.10 (December 30, 1996) ("Without the exemption, the application of section 31 fees to all transactions in particular OTC securities would have depended entirely on exchange decisions to trade OTC/UTP securities, or on issuer decisions to retain an exchange listing despite the stock being designated a Nasdaq/NMS security.")

[7] *See* 5 U.S.C. 553(d).

[8] *Id*

[9] 15 U.S.C. 78w(a)(2).

[10] 5 U.S.C. 601–612.

[11] 5 U.S.C. 603(a). As noted above, the Commission is not required to solicit public comment due to the nature of the Commission's revisions to Rule 31–1.

III. Statutory Basis

The amendments to Rule 31–1 under the Exchange Act are being adopted pursuant to 15 U.S.C. 78a et seq., particularly sections 23(a) and 31 of the Exchange Act.

IV. Text of Final Amendments

List of Subjects in 17 CFR Part 240

Reporting and record keeping requirements, Securities.

Text of Rule Amendment

For the reasons set forth above, the Commission amends Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.31–1 is revised to read as follows:

§ 240.31–1. Securities transactions exempt from transaction fees.

Preliminary Note

The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes other than narrow-based security indexes) is to be paid by the exchange or the national securities association itself, respectively, or by the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option. The following shall be exempt from section 31 of the Act:

(a) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(b) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(c) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(d) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(e) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) and any approved plan filed thereunder.

By the Commission.

Dated: January 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1620 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 02—05]

RIN 1515–AC85

Extension of Deadline To File a Wool Duty Refund Claim for Claim Year 2000

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This document amends the Customs Regulations on an interim basis to extend the deadline to file a wool duty refund claim for calendar year 2000, as authorized by section 505 of the Trade and Development Act of 2000. The regulations currently require that claims for a wool duty refund for calendar year 2000, except for certain amended claims, should already have been received by Customs by December 31, 2001. This deadline is extended until December 31, 2002, to reflect the fact that proposed legislation is currently pending before Congress which would significantly alter the scope of section 505 in regard to the amount of payment manufacturers would be eligible to receive, as well as the documents that a manufacturer would need to file to be entitled to a refund and, in part, because of the destruction of records at the New York Customshouse on September 11, 2001. The deadline extension is also intended to spare manufacturers from the filing of unnecessary documentation, again, in part, due to the destruction of records in New York. Additionally, Customs is amending the regulations to reflect the new Customs location to which all wool duty refund documentation should be sent.

DATES: This interim rule is effective January 23, 2002. The deadline to file a wool duty refund claim for calendar year 2000 is extended to December 31, 2002. Comments must be received on or before February 7, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Wool duty refund documentation should be sent to the U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927–1082.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs published in the **Federal Register** (65 FR 81344), as T.D. 01–01, the final rule adding the eligibility, documentation and procedural requirements for obtaining a wool duty refund to § 10.184 of the Customs Regulations (19 CFR 10.184).

On April 23, 2001, Customs published in the **Federal Register** (66 FR 20392), as T.D.01–33, an interim rule amending § 10.184 regarding the description of the wool products that are eligible to provide the basis for a wool duty refund and the tariff provisions that eligible wool products must be entered under to substantiate a refund.

Extension of Deadline To File a Wool Duty Refund Claim for Calendar Year 2000

Section 10.184(g) of the Customs Regulations sets forth the procedures for filing a wool duty refund claim. Paragraph (g)(1) provides, in pertinent part, that all refund claims, whether original or amended in the absence of a Customs notice of insufficiency or defect, must be received by Customs no later than December 31st of the year following the calendar claim year for which a wool duty refund is being sought. Therefore, pursuant to the existing regulations, all original claims and certain amended claims for calendar year 2000 must be received by Customs no later than December 31st, 2001.

Customs has learned that proposed legislation is currently pending before Congress which would significantly alter the scope of section 505 in regard to the amount of payment manufacturers would be eligible to receive, as well as the documents that a manufacturer would need to file to be entitled to a refund. For this reason, Customs has opted to extend the deadline to file calendar year 2000 claims until December 31, 2002, in an effort to spare manufacturers seeking refunds from the filing of unnecessary documentation.

If legislation is soon passed by Congress that amends section 505 to institute new procedures for filing a claim, Customs will publish another document in the **Federal Register** that amends § 10.184 to reflect the terms of the legislation, unless the legislation is self-effectuating. If legislation is not passed in the near future, Customs will inform potential claimants how to expedite the refund process under current law. In any event, the document published today should relieve manufacturers of concern that they must file claims by December 31st, 2001, to receive refunds for duties that they paid in the year 2000.

New Customs Address for the Submission of Wool Duty Refund Documentation

Section 10.184(g)(2) directs claimants to submit wool refund claims to Customs at the Residual Liquidation and Protest Branch located at 6 World Trade Center, New York, NY. Due to the events of September 11, 2001, that address no longer functions as a Customs office. This document amends § 10.184(g)(2) to reflect the fact that wool duty refund documentation should be submitted to the U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date

Because these regulations confer a benefit to the public by extending the deadline to file a wool duty refund claim for calendar year 2000 and redesignate the location to which such claims should be sent, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulatory amendments inform the public of changes to the procedures for filing a wool duty refund claim. For this reason, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collection of information involved in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0227. This rule does not substantively change the existing approved information collection.

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 control number assigned by OMB.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

For the reasons stated above, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority for § 10.184 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106–200, 114 Stat. 251;

* * * * *

2. In § 10.184, paragraph (g)(1), the third sentence is amended by removing the period after the word "sought" and adding the words ", with the exception of claims for calendar claim year 2000 which may be filed no later than December 31, 2002."

3. In § 10.184, paragraph (g)(2) is revised to read as follows:

§ 10.184 Refund of duties on certain wool imports.

* * * * *

(g) * * *

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit,

1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: January 17, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–1664 Filed 1–22–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 96N–0277]

RIN 0910–AA01

Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing additional criteria and procedures by which over-the-counter (OTC) conditions may become eligible for consideration in the OTC drug monograph system. The criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972, and OTC drugs without any U.S. marketing experience, can meet the statutory definition of marketing "to a material extent" and "for a material time" and become eligible. If found eligible, the condition would be evaluated for general recognition of safety and effectiveness in accordance with FDA's OTC drug monograph regulations. FDA is also changing the current OTC drug monograph procedures to streamline the process and provide additional information in the review.

DATES: This final rule is effective February 22, 2002.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. Currently, a sponsor wishing to introduce into the United States an OTC drug condition marketed solely in a foreign country must prepare and submit a new drug application (NDA). Likewise, companies with OTC drugs initially marketed in the United States after the 1972 initiation of the OTC drug review must have an NDA. This final rule provides procedures for these NDA drugs to become eligible for inclusion in the OTC drug monograph system by first submitting a time and extent application (TEA) to show marketing "to a material extent" and "for a material time." Once determined eligible, safety and effectiveness data would be submitted and evaluated. This two-step process allows sponsors to demonstrate that eligibility criteria are met before having to expend resources to prepare safety and effectiveness data.

I. Background

The OTC drug monograph system was established to evaluate the safety and effectiveness of all OTC drug products marketed in the United States before May 11, 1972, that were not covered by NDAs and all OTC drug products covered by "safety" NDAs that were marketed in the United States before enactment of the 1962 drug amendments to the Federal Food, Drug, and Cosmetic Act (the act). In 1972, FDA began its OTC drug review to evaluate OTC drugs by categories or classes (e.g., antacids, skin protectants), rather than on a product-by-product basis, and to develop "conditions" under which classes of OTC drugs are generally recognized as safe and effective (GRAS/E) and not misbranded.

FDA publishes these conditions in the **Federal Register** in the form of OTC drug monographs, which consist primarily of active ingredients, labeling, and other general requirements. Final monographs for OTC drugs that are GRAS/E and not misbranded are codified in part 330 (21 CFR part 330). Manufacturers desiring to market an OTC drug covered by an OTC drug monograph need not seek FDA clearance before marketing. In a future issue of the **Federal Register**, the agency will be publishing a final call for data for OTC drug products marketed in the United States before May 11, 1972, to be reviewed as part of the original OTC drug review.

In the **Federal Register** of October 3, 1996 (61 FR 51625), FDA published an advance notice of proposed rulemaking (ANPRM) stating that it was considering proposing to amend its regulations to include criteria under which certain additional OTC drug conditions may become eligible for inclusion in the OTC drug monograph system. Interested persons were invited to submit written comments by January 2, 1997. The agency received 16 comments, which it discussed in section III of a proposed rule that was published in the **Federal Register** of December 20, 1999 (64 FR 71062 at 71067) (the proposed rule).

Under the proposal, eligibility for consideration in the OTC drug monograph system would be determined by showing a condition's use "to a material extent" and "for a material time" in compliance with the existing statutory requirements of the act. A number of ingredients have been marketed in OTC drug products under NDAs approved after May 11, 1972. The agency provided criteria and procedures in this proposal for ingredients such as these to be considered for OTC drug monograph status.

For OTC drug products without any U.S. marketing experience, this proposal represented a change in the agency's previous interpretation of "use" requirements in section 201(p) of the act (21 U.S.C. 321(p)). Previously, the agency interpreted the use provision to mean use in the United States only. The agency proposed this change in policy to expand "use" to include foreign marketing experience because it believed that under certain circumstances use outside the United States may appropriately be considered to satisfy the use requirements in section 201(p) of the act.

In the ANPRM, the agency used the term "condition" to refer to OTC drug active ingredients, indications, dosage forms, dosage strengths, routes of administration, and active ingredient combinations. In the proposed rule, the agency has used the term "condition" to refer to an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use. The agency has included the reference to botanical drug substance to recognize that the information needed for consideration of a botanical substance for inclusion in the OTC drug monograph system may differ from the information needed to evaluate other types of active ingredients for this purpose.

II. Description of the Proposed Rule

The existing OTC drug regulations in part 330 do not define eligibility requirements for consideration in the OTC drug monograph system or what constitutes marketing to a material

extent or for a material time. The proposed rule and this final rule set forth criteria and procedures for considering additional "conditions" (as discussed in section I of the proposed rule, 64 FR 71062) in the OTC drug monograph system. The definition of "conditions" appears in § 330.14(a) of the final rule.

The proposed rule established procedures for a sponsor with a condition it considered eligible for consideration to provide the agency certain information to establish eligibility. The proposed rule presented these procedures in table 1 format as part of a TEA as follows: (1) Basic chemical information about the ingredient (additional information needed for a botanical ingredient), (2) a list of all countries in which the condition has been marketed, (3) how the condition has been marketed in each country (*e.g.*, OTC general sales direct-to-consumer, sold only in a pharmacy), (4) the number of dosage units sold, (5) marketing exposure (e.g., race, gender, ethnicity), (6) the use pattern in each country, (7) each country's system for identifying adverse drug experiences (ADEs), including method of collection, (8) how long the condition has been marketed in each country, (9) all labeling used during the marketing period in any country, and the time period each labeling was used, (10) all countries where the condition is marketed only as a prescription drug and the reasons why, and (11) all countries where the condition has been withdrawn from marketing or OTC marketing has been denied.

If FDA determined the condition eligible for consideration in the OTC drug monograph system, it would publish a notice of eligibility in the **Federal Register** and place the TEA on public display. The sponsor and other interested parties would then submit data to support safety and effectiveness. If the agency tentatively determined the condition GRAS/E, it would propose to amend the applicable OTC drug monograph or propose a new monograph. There is a comment period for interested persons to comment on the agency's proposal, during which interim marketing would not be permitted. The agency would then publish a final rule, at which time marketing could begin.

Interested persons were invited to submit comments by March 22, 2000. The agency received comments from four industry trade associations, one health coverage association, three suppliers of OTC drug ingredients, and three manufacturers of OTC drug products.

III. Comments on the Proposed Rule

A. General Comments

1. One comment contended that there is no legal basis for the agency's proposal. The comment disagreed with FDA's position that for a drug to qualify for inclusion in the OTC drug review and not be a new drug under section 201(p)(2) of the act the drug must have been used to a material extent or for a material time under its conditions of use in the United States only (64 FR 71062). The comment added that there is no basis in the act to support FDA's interpretation that foreign data cannot be used to satisfy the material time or material extent requirements of the act. The comment noted FDA's willingness in recent years to accept and rely upon foreign data as the basis for approving NDAs for prescription and OTC drugs, food additives, and premarket applications for medical devices.

The agency explained in the proposal (64 FR 71062) that it had previously interpreted the "use" requirements in section 201(p) of the act to mean use in the United States only, and that the proposal represented a change in the agency's interpretation. The agency proposed this change in policy to expand "use" to include foreign marketing experience because it believed certain circumstances of use outside the United States may appropriately be considered to satisfy the use requirements in section 201(p) of the act. The agency considers this approach consistent with its use of foreign data as the basis for approving NDAs for prescription and OTC drugs, food additives, and premarket applications for medical devices. The agency continues to believe that there is an appropriate legal basis for the additional criteria and procedures in this final rule, as described in the proposal.

2. One comment contended that the proposed procedures would effectively terminate the OTC drug monograph process as conceived and implemented to date, noting that the process has included flexibility to consider new conditions and allowed interim marketing for nonmonograph products. The comment added that the agency's procedural regulations for the OTC drug review were designed to be flexible and to establish a standard procedure first for the review of pre-1972 drugs and later to determine the status of post-1972 and foreign marketed drugs. The comment considered the new procedures inflexible and unworkable.

The agency disagrees that the new procedures are inflexible and unworkable and would effectively terminate the OTC drug monograph process as conceived and implemented to date. The agency also disagrees that the procedural regulations for the OTC drug review were designed for review of post-1972 and foreign marketed drugs. The proposal (37 FR 85, January 5, 1972) and the final rule (37 FR 9464, May 11, 1972) that established the OTC drug review only discussed OTC drugs "now marketed." Estimates of the number of OTC drug products on the market (37 FR 85) only covered the United States. Thus, the original OTC drug review procedures were not developed to address post-1972 and foreign marketed drugs. Accordingly, the agency proposed (64 FR 71062 at 71067) and is modifying the existing procedures in § 330.10 to make them consistent with the new scope of the review. Interim marketing is discussed in comment 21 of section III. D of this document.

3. A number of comments contended that the proposed procedures and data requirements are too complex and protracted, unduly burdensome (more burdensome than the NDA process), unrealistic, prohibitive, and unwieldy to be of practical value to industry. The comments stated that the TEA is too onerous and broad in scope because it requires exhaustive information rather than adequate information to demonstrate marketing history. The comments argued that it is excessive to require exhaustive data from every country in the world for a threshold eligibility consideration. Another comment added that the requirement for a worldwide data search would be a disincentive to companies with good data from a few countries but without the resources to do a worldwide search. One comment added that the safety and effectiveness consideration should be based upon the quality of the data, not upon arbitrarily selected material times, material extents, or listing of countries, and that the scope of certain requirements is quite narrow and restrictive (*e.g.*, show that pharmacy-only sale does not indicate safety concerns). Several comments requested that the procedures be more flexible and less complicated so as to encourage quality products to enter the review process rather than deter them from entry. Other comments suggested that the agency rescind the proposed rule. Two comments recommended that the agency use the same eligibility criteria for foreign ingredients as used for domestic ingredients in the original OTC drug review.

The agency does not consider the TEA too onerous or broad in scope. The TEA is designed to provide FDA basic

information about a condition for which it may have little or no information. The TEA is also designed to provide sufficient information to allow for a one-time assessment of a condition's eligibility for consideration in an OTC drug monograph. The agency agrees with the comments that it is not necessary to require exhaustive data from every country in the world for a threshold eligibility consideration and has modified some of the TEA requirements (see comment 12 of section III.B of this document). The agency agrees that the safety and effectiveness consideration should be based upon the quality of the data. The agency does not believe that the procedures will deter quality products from entering the review process because products with quality data should be able to readily meet the requirements of the process. Excluding prescription-to-OTC switches that the panels could consider, the primary criterion for eligibility in the original OTC drug review was that the ingredient had to be in the U.S. OTC market before May 11, 1972. It would not be practical to use that date for foreign conditions because many conditions that entered the market after that date would be excluded. In addition, none of the foreign conditions have been marketed in the United States and the United States has no experience with these conditions. The agency has developed eligibility criteria, as discussed in the preamble of the proposed rule (64 FR 71062 to 71064), that it considers necessary to provide sufficient information for a condition to be considered for inclusion in the OTC drug monograph system. The agency finds no basis to rescind the proposed rule, and the agency is publishing a final rule so that additional conditions may now begin to be considered.

4. One comment contended that the proposed procedures would establish a nontariff trade barrier in violation of the General Agreement on Tariffs and Trade (GATT). The comment stated that the proposal differentiates between a cosmetic-drug sold in the United States prior to 1972, which is eligible for inclusion in the OTC drug review without any further information, and a cosmetic-drug sold outside the United States prior to 1972, which would be eligible only after submitting a comprehensive TEA. The comment added that the proposal also discriminates against foreign products by prohibiting marketing until publication of a final monograph, while U.S. products may generally be marketed after publication of a tentative final monograph (TFM).

The issue of a trade barrier in violation of GATT was also raised in the comments on the ANPRM and was discussed in comment 11 of section III.B of the proposed rule (64 FR 71062 at 71072). The agency does not believe that any provisions of this final rule would violate GATT (which is now one of the multilateral agreements annexed to the agreement establishing the World Trade Organization). Among other reasons, foreign-manufactured products marketed in the United States prior to 1972 are treated the same as domestic manufactured products marketed in the United States prior to 1972. Similarly, both foreign and domestic manufactured products marketed in the United States after 1972 under NDAs would be eligible for consideration in the OTC drug review after submission of the same TEAs demonstrating that the same material time and extent criteria have been met. Foreign manufactured products previously marketed only in foreign countries would also be eligible for consideration in the OTC drug review after submission of TEAs that show these same material time and extent criteria have been met. Under this rule, drugs produced in the United States and those produced abroad would be treated the same way, and both would be required to comply with U.S. labeling and manufacturing requirements as a condition of marketing in the United States.

Interim marketing is discussed in comment 21 of section III.D of this document. Under § 330.14(h), products previously marketed only in foreign countries that are included in a tentative final monograph may also, if appropriate, be marketed in the United States before completion of the final monograph.

The provisions of this final rule serve to promote and protect human health and safety and do not create trade barriers.

5. One comment noted that under the proposal a condition is not eligible for OTC drug monograph status if marketing in the United States is limited to prescription drug use only and requested the agency to expand the criteria for monograph status to include drugs marketed by prescription in the United States. The comment contended that FDA may determine drugs to be eligible as GRAS/E for an OTC drug monograph on the basis of various types of evidence, including "significant human experience during marketing." The comment contended that if adequate adverse event information is available for foreign OTC drugs that remain prescription drugs in the United States, FDA should allow consideration of these active ingredients for possible inclusion in an OTC drug monograph. The comment added that certain prescription conditions were considered for and added to the OTC drug monographs during the original OTC drug review (drugs marketed prior to 1972). Another comment considered the proposal narrow and restrictive because a drug sold OTC in some foreign countries would be ineligible for monograph status if it is marketed by prescription in the United States.

The agency agrees with the comments and believes there was an inconsistency with the criteria proposed in § 330.14(b). Under the proposed criteria, a condition marketed OTC in one or more foreign countries that is limited to prescription use in other foreign countries would be considered for eligibility in the OTC drug monograph system. However, a condition marketed OTC in one or more foreign countries that is limited to prescription drug use in the United States would not be considered for eligibility. The agency has decided to address this inconsistency by removing the criterion in proposed § 330.14(b)(2) to allow conditions marketed OTC in foreign countries that are limited to prescription drug use in the United States to be considered for eligibility in the OTC drug monograph system. If such a condition is found to be eligible, the sponsor must then provide the necessary information, which would include the U.S. prescription marketing experience, as part of the safety and effectiveness submission to establish that the condition is appropriate for OTC status in the United States and that it can be marketed as GRAS/E under the OTC drug monograph system. The agency believes that it can adequately address in its monograph review the issues associated with a product's prescription use in the United States, and the appropriateness of switching the product to OTC use.

6. One comment contended that there is no need for FDA to make a material time/extent determination wholly separate from its consideration of safety and effectiveness.

The agency discussed this subject in comment 13 of section III.C of the proposed rule (64 FR 71062 at 71073) and provided three reasons for the two-step review approach. The comment did not provide any reasoning to support rejecting this approach, and the agency concludes that separate evaluations of material time/extent and safety/effectiveness are the most efficient way to evaluate these additional conditions

for inclusion in an OTC drug monograph.

B. Comments on Criteria for Time and Extent of Marketing

7. One comment contended that the TEA filing reflects a misunderstanding that sponsors must show both material time and material extent. The comment stated that a product is legally required to satisfy the requirement of "to a material extent" or "for a material time," which was intended to satisfy the requirement that a drug be used for sufficient time or have wide enough distribution for discovery of any adverse experiences.

The agency discussed this subject in comment 8 of section III.A of the proposed rule (64 FR 71062 at 71069 to 71070). The agency explained there why a condition that is considered "not a new drug" must satisfy both the material extent and the material time criteria in section 201(p)(2) of the act. The comment did not provide any information to change the agency's position.

8. One comment agreed with most of the proposed time and extent criteria, but contended that specific data on the number of dosage units sold in each country (number of units sold by package sizes, number of doses per package based on labeled directions for use) is difficult to compile, unnecessarily detailed for evaluating time and extent of marketing, and unlikely to be maintained by industry with the degree of specificity proposed in the rule. The comment concluded that specific marketing information related to dosage units should be required only to the extent it is reasonably capable of being compiled. A second comment stated that there should be no numerical floor for the number of units that must have been marketed. Another comment stated that the number of dosage units sold should be replaced by the total quantity of product sold, with an extrapolation to the number of consumer units based on average package size.

The agency has reconsidered how information should be provided on the number of dosage units sold. The agency's primary concern is determining consumer exposure to the condition. The agency has determined that the number of units sold by package sizes (*e.g.*, 24 tablets, 120 milliliters (mL)) and the number of doses per package based on the labeled directions for use may not be necessary to determine a condition's extent of marketing and is removing these requirements from proposed § 330.14(c)(2)(ii). Instead, the agency is only requiring a list of the various package sizes for each dosage form in which the condition is marketed OTC along with an estimate of the minimum number of potential consumer exposures to the condition using one of the following calculations: (1) Divide the total number of dosage units sold by the number of dosage units in the largest package size marketed, or (2) divide the total weight of the active ingredient sold by the total weight of the active ingredient in the largest package size marketed. Information on package size should be readily available from marketers of the product, if other than the sponsor, or other marketing sources (e.g., wholesalers) and will allow the sponsor to estimate the minimum number of potential consumer exposures to the condition. In addition, to ensure that consumer exposure is adequate for any one dosage form, the agency is changing the proposed criterion in § 330.14(c)(2)(ii) to state "The total number of dosage units sold for each dosage form of the condition." One comment's request for replacing " the number of dosage units sold" with "total quantity of product sold" is discussed in comment 11 of section III.B of this document. The agency agrees that there should be no numerical floor for the number of dosage units that must be marketed and is not including such criteria in this final rule.

9. One comment requested the agency to reconsider its requirement for information regarding geographical and cultural differences (e.g., race, gender, ethnicity) between the countries where the product has been marketed and the U.S. population. The comment contended that this information is difficult to obtain, subjective in nature, and subject to inconsistent evaluation. The comment maintained that specific marketing information related to geographic and cultural distinctions should be required only to the extent it is reasonably capable of being compiled. The comment requested that FDA require this information only in those situations where it is aware of specific cultural and/or geographical differences that would be relevant to the review process. Another comment stated that it should be possible to refer to large geographical areas (e.g., the population of the European Union) to support sufficient variability in terms of culture and gender to show adequate population exposure.

The agency discussed the need for marketing exposure data in comment 11 of section III.B of the proposed rule (64 FR 71062 at 71071 to 71072). Because of the potential breadth of this requirement, the agency is modifying the criteria in proposed § 330.14(c)(2)(iii) to require, as a means of determining marketing exposure, information on the population demographics (percentages of various racial/ethnic groups) for each country where the condition has been marketed and the source(s) from which this information has been compiled. Examples of sources for this information include the following Internet sites: http://www.cia.gov/cia/publications/factbook/index.html, and http://www.state.gov/www/background/index.html. The national statistical office for the individual country also may provide relevant information. The agency believes this information will not be difficult to obtain or subjective in nature, and that it can be evaluated consistently. Although sponsors may use the categories and definitions in the Office of Management and Budget's **Federal Register** notice, entitled "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," when describing the population demographics of each country, the agency is removing the reference to this document from § 330.14(c)(2)(iii) because other countries may not use all of these categories and definitions.

10. One comment requested that use pattern information (e.g., how often and how long the ingredient is to be used according to its labeling) (proposed § 330.14(c)(2)(iv)) be included as part of the safety evaluation rather than as part of the time and extent information. The comment stated that such information involves an evaluation of historical labeling and appears to be related to safety; thus, it is more appropriate in the safety submission rather than in the TEA.

The agency discussed the need for providing use pattern information as part of the TEA in comment 7 of section III.A of the proposed rule (64 FR 71062 at 71069). The agency stated that this information was needed at that stage of the condition's review to determine if a product's use is different in other countries than it would be in the United States. However, the agency is modifying the criterion in proposed § 330.14(c)(2)(iv) to require use pattern information only when the use pattern varies between countries or when it has changed over time in one or more countries. The agency agrees that use pattern information is also related to the condition's safety, and also may consider it in the safety evaluation.

11. Two suppliers of active ingredients expressed concern about being able to provide accurate information on how their ingredients

are marketed in final form, the number of final product units sold, and the labeling or adverse event reports relevant to finished products. One supplier stated that it could provide information about the countries in which the active ingredients are sold and the quantities sold for OTC use, but that customers would be unlikely to provide their sales data. The comments asked FDA to accept sales and related information from active ingredient manufacturers as evidence of material time and material extent.

The agency has reconsidered the information requirements for a TEA. In addition to the revised requirements discussed in response to other comments, sponsors of TEAs who are manufacturers or suppliers of OTC active ingredients may provide dosage unit information as total weight of active ingredient sold (cumulative total for the specific condition being considered) for each country in which the condition is marketed. This revision to § 330.14(c)(2)(ii) provides active ingredient manufacturers a mechanism to provide pertinent sales data. The agency has also reduced the amount of labeling information that must be provided (see comment 14 of section III.B of this document). The agency discussed the availability of ADE information in the proposal (64 FR 71062 at 71070 to 71071) and the comment did not provide any basis to support changing this requirement.

12. One comment agreed with the importance of the objectives of the data requested in proposed § 330.14(c)(2), i.e., that detailed information from a number of countries addresses some of the ethnic, cultural, and racial variances that may exist among users in foreign markets and the relevance of this information to potential use of the product in the United States. However, the comment considered it burdensome to provide this information from all countries if the product is marketed in a large number of foreign countries. The comment suggested an alternate TEA requirement for products that have 5 years or more of continuous marketing in 50 or more countries and marketing for 20 years or more in one of the "Tier 1" countries for purposes of the export provisions of section 802(b)(1)(A) of the act (21 U.S.C. 382). These countries include Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the European Union (EU) or a country in the European Economic Area (the countries in the EU and the European Free Trade Association).

The comments suggested that sponsors meeting the threshold criteria would be permitted to select, after consultation with FDA, six countries that represent both significant markets for the product and cultural diversity. The sponsor would then complete the TEA with information applicable to the six countries or, with FDA's agreement, obtain information by contacting public health officials and otherwise soliciting information on the type of marketing, patterns and conditions of use, and adverse drug experiences from product users in each selected country. The comment concluded that this approach should provide the necessary information for FDA to make its evaluation and provide sponsors the opportunity to consult with the agency to develop reasonable means to collect the information needed to assure FDA of the suitability of foreign-marketed conditions. Another comment stated that the information requested in proposed § 330.14(c)(1), (c)(2)(ii), (c)(2)(iv), and (c)(3) is very difficult, if not impossible, for a manufacturer of the raw material to provide because only the manufacturers of finished products would be able to provide this information. The comment recommended that for classes of OTC drugs for which there are only qualitative instructions for use, such as for sunscreen and antidandruff products, the basic information required would be based on the number of kilograms of the active ingredient sold per year and per country for this intended drug use. In addition, the regulatory status of the ingredient in those countries that have specific legislation controlling the usage of the ingredient, and the maximum amount of the substance allowed to be marketed, would be provided. The comment recommended revisions to § 330.14(c)(1), (c)(2)(ii), (c)(2)(iv), and (c)(3) and the following new § 330.14(c)(2)(vi) to allow certain products to comply with proposed § 330.14(c)(2)(ii):

For sunscreen and antidandruff OTC drugs in which there are no quantitative dosage instructions for the use of the products in the final monographs, list all countries that the drug is approved for use, what maximum concentrations are allowed, any restrictions on usage that are enforced, the number of kilograms sold per country (per year and cumulative), what known adverse effects have been reported and list the other drugs in the same OTC category that it has been combined with. This data to be supplied in tabulated form.

The comment further suggested that these modifications be limited to OTC sunscreen drugs that are permitted for use in annex VII of the EU Cosmetics Directive and the OTC antidandruff drugs that are regulated as preservation materials in annex VI, or are for restricted use as indicated in annex III of the EU Cosmetics Directive for this purpose. The comment concluded that this approach should assure FDA that the active ingredients in these two classes have had a pedigree of peer review and/or a history of long usage in the EU. Another comment strongly supported annex VII of the EU Cosmetics Directive to demonstrate the safety and effectiveness of four sunscreen agents marketed in Europe.

Another comment contended that it should not be necessary to submit a TEA for an ingredient that has been sold in the United States [under an NDA] for a material time and extent, e.g., including ibuprofen in the internal analgesic monograph. The comment added that under the proposal the only information exempted is labeling from every country.

The agency agrees with the first comment that it may not be necessary to provide detailed information from each country in which a condition is marketed if the condition has extensive marketing in a large number of foreign countries. The agency is providing an alternate TEA requirement if a condition has been marketed OTC in five or more countries with a minimum of 5 continuous years of marketing in at least one country. Sponsors who have this extensive marketing experience for a condition should select at least five of these countries from which to submit information in accord with § 330.14(c)(2)(i) through (c)(2)(iv). Countries that are selected must include the country with a minimum of 5 continuous years of OTC marketing, countries that have the longest duration of marketing, and countries having the most support for extent of marketing, i.e., a large volume of sales with cultural diversity among users of the product. If the condition meets these criteria in countries listed in section 802(b)(1)(A) of the act, some of these countries should be included among the five selected. Sponsors should provide information from more than five countries if they believe that it is needed to support eligibility. Sponsors should explain the basis for the countries selected in the TEA. This alternate TEA requirement appears in § 330.14(c)(4) of this final rule.

Even though sunscreen and antidandruff products are regulated differently by the EU, both are considered OTC drugs in the United States and are so regulated as part of the OTC drug monograph system. The agency recognizes that it may be difficult for manufacturers of the raw

material to obtain some of the information on finished products. Therefore, the agency is not requiring raw material manufacturers to provide the number of dosage units sold in each country (see comment 11 of section III.B of this document). The total weight of active ingredient sold per country (cumulative) for the intended use of the condition will be adequate, and the agency has revised proposed § 330.14(c)(2)(ii) accordingly in this final rule. The other required information in the comment's proposed § 330.14(c)(2)(vi) is already included in other parts of the regulation. Therefore, the agency sees no need to adopt new § 330.14(c)(2)(vi).

The agency concludes that it is still necessary to submit a TEA for an ingredient already marketed OTC in the United States under an NDA because the agency needs to evaluate if the condition has been marketed to a material extent and for a material time whether the OTC marketing was in the United States or elsewhere. In the proposal (64 FR 71062 at 71081), the agency stated that information on marketing exposure (proposed § 330.14(c)(2)(iii)) and the length of time the condition has been marketed in each country accompanied by all labeling used during the marketing period (proposed § 330.14(c)(3)) need not be provided for OTC drugs that have been marketed for more than 5 years in the United States under an NDA. In this final rule, the agency is removing the requirements to submit certain information if the condition has more than 5 years marketing in the United States under an NDA including: (1) How the condition has been marketed (§ 330.14(c)(2)(i)), (2) a description of each country's system for identifying ADEs (§ 330.14(c)(2)(v)), and (3) all countries where the condition is marketed only as a prescription drug (§ 330.14(c)(5)). The agency is not requiring this information because the information needed to satisfy these requirements is obtainable from the NDA.

13. One comment urged that there not be a rigid and inflexible 5-year marketing requirement to determine material time prior to considering monograph status for an OTC drug active ingredient.

The agency discussed this subject in comment 6 of section III.A of the proposed rule (64 FR 71062 at 71069). The agency noted there that in response to the ANPRM a number of comments agreed with the proposed 5-year minimum requirement to satisfy marketing for a material time. The agency considers a minimum of 5 years of OTC marketing experience a necessary duration of time to detect infrequent but serious ADEs that are occurring and, thus, provide an appropriate margin of safety. The comment did not provide any information to change the agency's position. However, the agency is modifying the eligibility criteria in proposed § 330.14(b)(3) (new § 330.14(b)(2)) by deleting the word "countries" to clarify that the minimum requirement is 5 continuous years of marketing in the same country. Although the agency recognizes that some conditions may be able to demonstrate marketing to a material extent from marketing in only one country, some conditions may not be able to do so. Therefore, the agency is adding the following sentence to the criteria in new section § 330.14(b)(2): "Depending on the condition's extent of marketing in only one country with 5 continuous years of marketing, marketing in more than one country may be necessary."

14. Two comments contended that marketing history (proposed § 330.14(c)(3)) will be difficult to obtain and requested the agency to limit information to a review of time and extent of marketing. One comment requested that specific marketing information related to historical product labeling be required only to the extent it is reasonably capable of being compiled.

The agency has reassessed the historical labeling requirements in proposed § 330.14(c)(3) and determined that the requirements can be modified. Because additional warning and direction information is most likely added over time rather than removed, the agency believes that a condition's current labeling will provide the appropriate, needed information. Therefore, the agency is revising proposed § 330.14(c)(3) to require that sponsors submit a statement of how long the condition has been marketed in each country and how long the current product labeling has been in use. In addition to providing a copy of the current product labeling, the sponsor should state whether that labeling has or has not been authorized, accepted, or approved by a regulatory body in each country where the condition is marketed.

C. Comments on Administrative Procedures

15. Two comments stated that timeframes should be established for publication of proposed and final rules. Based on considerable delays in the rulemaking process, the comments believed that the delay between publication of a proposed and final rule will not be minimal. Two comments urged the agency to institute specific timeframes for review of TEAs (one comment recommended 90 days) and safety and effectiveness submissions. The comments stated that the OTC drug review was implemented in 1972, and has yet to be completed and that some foreign ingredient petitions have languished before the agency for years. One comment expressed concern that submissions would continue to languish without specific review timeframes. The comment cited the agency's rationale in the proposed rule for not including review timeframes. The comment argued that it is the applicant's responsibility to ensure that submissions are prepared adequately and that it is unlikely that the agency will be overrun with applications upon implementation of the final rule. The comment stated that review timeframes would be in keeping with the goal of the Food and Drug Administration Modernization Act (FDAMA) to improve the efficiency of application review and that the agency has a public health obligation to ensure that applications are reviewed in a timely manner. The comments concluded that it is critical that timeframes be established if the agency does not permit interim marketing.

The agency agrees that TEAs and safety and effectiveness submissions should be reviewed in a timely manner consistent with the goal of improved efficiency. The Division of OTC Drug Products will be responsible for evaluating all TEAs and overseeing the progress of safety and effectiveness reviews. As differences will invariably occur in the quantity and quality of the TEA and GRAS/E submissions received, it is not possible to set exact timeframes for completing these reviews. The Division will strive to complete TEA evaluations within 90 to 180 days of receipt and will implement procedures to ensure that agency resources are used appropriately and result in timely action on safety and effectiveness submissions. The Division will contact the sponsor within 180 days about the status of its request.

The anticipated workload for reviewing these additional conditions is difficult to predict. The agency estimated in the proposal (64 FR 71062 at 71078 to 71079) and in this final rule that the number of TEAs submitted annually would be 50, with 30 approved, and with 3 subsequent safety and effectiveness submissions for each approved TEA. The agency received only one comment on these estimates to

help with its workload projections. That comment stated that it is unlikely that the agency will be overrun with applications upon implementation of the final rule. The agency notes that another comment from a foreign industry association representing the cosmetics, toiletries, perfumes, and detergent industry stated that it represented 350 member companies who produce cosmetic products for markets all over the world and that it has been waiting for this new process for a long time (Ref. 1). If a number of this association's members sponsor TEAs, the agency's workload estimates could be low. The agency predicts that as it gains experience with evaluating the foreign data, the speed of its reviews should increase. While the agency is currently unable to project the timeframe it will take to publish proposed rules, it anticipates that the time between proposed and final rules should be short, in many cases because the proposed action will be to add another ingredient to an already existing monograph for which the basic OTC labeling for the product is already established. When a new monograph and OTC drug product labeling is initially established, the agency anticipates that the timeframe between proposed and final rules may be somewhat longer.

16. One comment offered suggestions for streamlining the review process for TEAs and safety and effectiveness submissions. For TEAs, the comment suggested that the agency publish a guidance document to help ensure that the content and format of applications are submitted in a uniform matter. The comment stated that the agency could then use the refuse-to-file concept for applications that do not meet the basic requirements. For safety and effectiveness submissions, the comment fully supported voluntary use of accredited outside organizations or individuals, such as a third-party review program developed by the European Sunscreen Manufacturers Association (Ref. 2) or FDA's medical devices pilot program for third-party review of selected premarket notifications . The comment believed that the agency could implement such a program under the authority of FDAMA. Another comment also strongly supported third party review to reduce review time.

The agency may publish a guidance document to assist manufacturers to organize TEAs in a uniform manner. However, the agency did not want to delay publication of this final rule while developing that guidance document. In the meantime, sponsors should organize their TEA in the sequence in which information is listed in § 330.14(c). The agency will not use a "refuse-to-file" concept (a threshold determination) for TEAs that do not meet the basic requirements. The agency will do a substantive review of all TEAs, and any TEA that does not contain the required information will result in the condition being found not eligible for consideration.

The agency used a third party review system (advisory review panels) for the original OTC drug review and states that it may use an advisory review panel in § 330.14(g) of the new procedures. When a third-party reviews the safety and effectiveness data, the agency still needs to do its own independent evaluation of the data. Therefore, in the new procedures in § 330.14(g), the agency states that it may evaluate the data in conjunction with the advisory review panel or on its own without using an advisory review panel. Both of these procedures are intended to reduce the overall review time. Based on the number of conditions submitted for review, the agency may consider other alternatives, as necessary, to review submissions in a timely manner.

17. Two comments requested confirmation that the agency would maintain the confidentiality of ineligible TEAs. One comment recommended that this information be returned to the applicant. The comments also requested confirmation that sales data identified by the company in an eligible TEA as trade secret or confidential would remain confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act (21 U.S.C. 331(j)). One comment stated that it is unclear whether the agency intends to notify the applicant if it does not agree with the request for confidential treatment. The comment requested that the agency clarify that it will give notice, consistent with 5 U.S.C. 552(b), so that applicants can determine whether to withdraw the information.

The procedures related to the confidentiality of a TEA are in § 330.14(d). FDA processes a TEA as confidential until a decision is made on the eligibility of the submitted condition for consideration in the OTC drug monograph system. If the condition is not found eligible, the agency will not place the TEA on public display. Only a letter from the agency to the applicant, stating why the condition was not found acceptable, will be placed on public display in the Dockets Management Branch. However, the agency cannot return the TEA to the applicant, but must retain it as the data upon which the agency made its decision.

If the condition is found eligible, the agency will place the TEA on public display after deletion of any information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). This is similar to the process used for submissions to the advisory review panels under § 330.10(a)(2) of the OTC drug review administrative procedures. Under those procedures, when the agency published a panel's report (ANPRM) in the **Federal Register**, it stated in the notice that all of the information that had been submitted to the panel would be put on public display 30 days after the date of publication except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or 21 U.S.C. 331(j). (Section 330.10(a)(2) has been updated to also include 5 U.S.C. 552(b).) None of the information submitted to the panels was specifically designated as confidential. Requests for confidentiality were to be submitted to the agency during that 30-day period for the agency to evaluate before placing the submissions on public display. Under the new procedures in § 330.14(d), a sponsor must identify what information in the TEA it considers confidential under the above statutory provisions. The agency's general philosophy is that most, if not all of the information in a TEA should be considered public information. As discussed below, the agency has revised the information requirements to take this into account.

The agency has determined that most of the required information would not be considered confidential in making an eligibility determination. Total sales figures covering a period of years historically have not been considered confidential in the OTC drug review process. The agency has determined that yearly sales figures do not need to be provided and has revised proposed § 330.14(c)(2)(ii) accordingly in this final rule. However, if a sponsor needs to provide yearly sales figures to explain something about the marketing of a condition, it should do so but should not expect the agency to keep the information confidential.

Section 330.10(a)(2) only requires a sponsor to provide a statement of the quantities of active ingredients of the drug product. It does not require inactive ingredient information and that information should not be provided unless it appears in the product's labeling. Information about a color or fragrance in the product is not required and should not be included in the TEA. Information about inactive ingredients generally is not considered confidential, because such information would appear

in the labeling of the OTC drug or drug-cosmetic product in the United States. If a specific manufacturing process is included in a TEA because that information is necessary to explain the product and that process relates to the "product" and not the "active ingredient(s)," it may be considered confidential, unless it has a bearing on the product's safety and effectiveness. Other than this limited situation, the agency does not anticipate that other information in a TEA will be considered confidential. The agency's view is that consideration for OTC drug monograph status is a public process and all information provided should be part of the public record if the condition is determined to be eligible. If the agency does not agree with a sponsor's request for confidential treatment of specific parts of a TEA, it intends to discuss the matter with the sponsor before placing the TEA on public display, just as it did with parts of the submissions made to the panels under the original OTC drug review.

18. One comment recommended that any advisory committees used to make GRAS/E determinations for foreign marketed products be comprised of experts with OTC drug experience, including experience outside of the United States. The comment stated that this is necessary to properly assess and appreciate the full implications of non-U.S. marketing and regulatory systems under which these ingredients may have been marketed.

The agency intends to use its Nonprescription Drugs Advisory Committee (NDAC) as the primary advisory committee to consider GRAS/E determinations for foreign marketed products. NDAC will be supplemented by members from other committees as applicable to the subject matter being considered. These committee members will have OTC drug experience, some of which may include experience outside of the United States, depending on the composition of the agency's advisory committees, which changes yearly. The agency intends to allow sponsors to present information to inform advisory committees that consider GRAS/E determinations for foreign marketed products about the regulatory systems under which these ingredients may have been marketed.

19. One comment recommended that sponsors be tentatively notified if the condition can not be GRAS/E and be provided an opportunity to supplement their submission or withdraw it, rather than receiving notification from the agency that the condition is not GRAS/E. The comment explained that a determination of not GRAS/E may be inconsistent with the condition's regulatory status in other countries, and the sponsor should have the opportunity to withdraw the submission prior to a final agency decision.

The agency intends to use its established OTC drug review feedback procedures to notify sponsors and other interested parties who have submitted data and information in response to a notice of eligibility if a condition has been determined not to be GRAS/E. Parties can respond to a feedback letter and supplement their submissions. The agency may request a response within a specified timeframe in order to complete its review in a timely manner. A sponsor can also withdraw its request for the agency to consider its submission (which would not stop the agency from publishing its decision in the **Federal Register**), but the submission is part of a public docket and will not be returned. Parties will have another opportunity to respond when the agency publishes a notice of proposed rulemaking to include the condition in § 310.502 (21 CFR 310.502). (See § 330.14(g)(4) and (g)(5).)

20. One comment requested that the agency begin to accept TEAs pending the completion of the final rule. The comment based this request on the delay in issuing the final rule and numerous citizen petitions pending before the agency. The comment stated that such actions would be consistent with notifications for Generally Recognized as Safe (GRAS) status for food substances under the agency's proposed rule for GRAS notifications. The comment also requested that the agency equitably resolve its back log of citizen petitions by giving priority to those petitions which have been pending for more than 10 years.

The agency decided not to accept TEAs prior to completion of the final rule so that all TEAs that are submitted will be in the format required by this final rule. Likewise, the agency will be responding to the pending citizen petitions (for considering certain foreign conditions for OTC drug monographs) by telling the petitioners to submit TEAs with the required information in the proper format. A petitioner should be able to readily convert their petition to a TEA and submit it to the agency to begin the review process. TEAs will generally be reviewed in the order they are received. However, if the petitioners convert their pending citizen petitions to TEAs and submit them within 120 days of the publication date of this final rule, the agency will give these TEAs priority review.

D. Comments on Marketing Policy

21. A number of comments disagreed with the agency's proposed marketing policy. The comments requested that the agency allow interim marketing at different times: (1) Once the condition has been determined eligible for consideration, or (2) once the condition has been proposed in the **Federal Register** as GRAS/E and a United States Pharmacopeia (USP) monograph is in place. The comments stated that interim marketing has existed for U.S. marketed products under the OTC drug review, there is precedent for extension of the practice under the new criteria, and most conditions submitted for consideration will pose no greater risk than category III ingredients currently marketed or marketed over the last 25 years. The comments stated the principles of administrative law require the agency to apply practices consistently between similar products with similar circumstances. One comment concluded that, at a minimum, the agency should consider requests for interim marketing as part of the TEA and approve such marketing on a case-by-case basis. Another comment added that there is a need for access to a broader range of safe and effective OTC sunscreen ingredients and the agency should distinguish these ingredients. The comment believed interim marketing for sunscreens and other topical products should be available if the condition has been cleared for safety by an appropriate foreign governmental body such as the Scientific Committee on Cosmetics and Non-Food Products (SCCNFP) in Europe.

One comment believed that the prohibition against interim marketing would inappropriately bar the marketing of a product that is not a "new drug" and would be inconsistent with the agency's current enforcement policy regarding interim marketing of products currently under consideration in the OTC drug monograph system. Two comments claimed that a condition marketed after it has been proposed in **Federal Register** as GRAS/E does not constitute a "new drug" under the statutory definition. One comment maintained that a condition is legally no longer a new drug once it has been found to be GRAS/E and been determined to be marketed to a material extent and for a material time. The comments stated that there is no statutory authority for the agency to prevent the marketing of a product that is not a new drug, and that the agency has no legal basis for taking enforcement action against the marketing of such

products. The comment concluded that once a proposed monograph amendment is published in the **Federal Register**, there is no sound policy basis for permitting the marketing of conditions with U.S. marketing history and not permitting marketing of conditions with foreign marketing history.

Other comments contended it was not necessary to only allow marketing under final OTC drug monographs. One comment contended that it is not clear whether foreign marketed OTC products would present any greater risk than domestic products at the same stage of review. The comment added that to prohibit interim marketing implies that public comment on safety and effectiveness is required to validate the agency's conclusions. The comment maintained that this position is inconsistent with the agency's expert role of safeguarding the public health. Two comments disagreed that marketing only under a final OTC drug monograph would allow for a thorough public consideration of any safety and effectiveness issues that might arise before marketing begins. One comment stated that the examples given by the agency of topically applied ingredients with prior safety concerns was not persuasive. The comment noted that the safety concerns were not so significant as to prevent OTC marketing of those ingredients under less stringent criteria than currently proposed.

One comment believed that requiring completion of a USP monograph should not be a reason to limit marketing to only under a final monograph. The comment acknowledged the importance of establishing USP monograph standards for OTC drug active ingredients, but objected to the requirement since the agency has not required USP monographs prior to the marketing of active ingredients already under consideration in the OTC drug review.

Two comments disagreed with the agency's statement that marketing only under a final OTC drug monograph would allow manufacturers to avoid expensive relabeling when changes occur between the proposal and the final rule. One comment argued that it is not FDA's place to make business decisions for industry, which might in fact conclude that the marketing potential of the product is worth the risk. The comment added that all manufacturers of OTC drug products that are not yet subject to a final monograph face the same risk. The comments concluded that it should be left up to OTC manufacturers to determine whether the revenue and product recognition lost from any proposed restrictions on interim marketing would outweigh any potential costs of relabeling.

The agency agrees that the interim marketing policy should be consistent between similar marketed products. Conditions that were reviewed by the OTC advisory review panels were allowed to be marketed during the course of the review if they had been marketed OTC in the United States when the review began. Conditions that were not marketed OTC in the United States when the review began could not be marketed until a panel's report was published in the **Federal Register** and the agency did not disagree with the panel's recommendations (see 21 CFR 330.13). When a new condition was submitted for consideration after a panel's report was published and before a TFM was published, the agency usually addressed the status of that condition in the TFM. The agency stated in the TFM that marketing may begin with publication of the TFM or not until public comments were received on the TFM and a notice of enforcement policy was published in the **Federal Register** allowing marketing to begin. A similar procedure was used if a new condition was proposed for inclusion in a monograph after the TFM was published but before a final monograph was issued. Interim marketing was usually allowed because of the period of time projected before the final rule would issue.

For those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E and the agency has not changed its position as a result of the comments, the agency will then publish a notice of enforcement policy to allow interim marketing. This enforcement notice will be similar to those used in the original OTC drug review and will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. However, interim marketing will not be allowed if USP–NF compendial monograph standards for the condition do not exist.

For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing will not be allowed. It will first be necessary to seek public comment on the amendment to a final monograph or whether a new monograph should be established. The agency will not issue an enforcement notice under these circumstances because it takes the same amount of time and agency resources to resolve any outstanding issues and to proceed directly to issuance of a final rule.

22. One comment expressed concern that the proposed eligibility criteria would require the submission of an NDA or TEA for even a slight variation of a monograph product. The comment cited examples that could trigger the requirement of an NDA or TEA, such as a simple combination of two well established OTC drug ingredients or immaterial changes in dosage form or concentration. The comment argued that a condition not authorized by a final monograph is not automatically a "new drug" and the agency has the discretion under 21 CFR 310.3(h), to recognize that not all new conditions make a product "new." The comment concluded that the agency should reaffirm its authority to authorize interim marketing for both pre-1972 and post-1972 non-monograph conditions, consistent with its practice of issuing notices of enforcement policy for products that are the same as monograph products but for immaterial changes in such characteristics as dosage form or concentration.

Variations from a monograph product or a condition being considered may or may not trigger the need for a TEA or NDA. A combination of two well established OTC drug ingredients that is not included in an existing OTC drug monograph or that has not been marketed in the United States would need a TEA. If one of the ingredients is marketed under an NDA, the product is considered a new drug and the combination would need an NDA. A TEA could be submitted for a change in concentration outside that included in an existing OTC drug monograph if that concentration has foreign marketing experience that meet the eligibility criteria. Information would be needed to support the safety and benefit of a higher concentration (as occurred with hydrocortisone for external analgesic use in the original OTC drug review) or the effectiveness of a lower concentration. If a condition marketed in one foreign country at one concentration is found eligible to be reviewed, another sponsor using a different concentration in another country may wish to submit a TEA and request that both concentrations be evaluated simultaneously.

Most OTC drug monographs for oral products are not dosage form specific. Most OTC drug monographs for topical products also are not dosage form

specific and may state that the product is in a dosage form such as a cream, gel, lotion, or ointment. Some OTC drug monographs for topical products are dosage form specific and state that particular ingredients must be in a specific vehicle, e.g., in a suitable water soluble or oleaginous ointment base. Even this specific requirement would allow some flexibility for minor changes in the dosage form. Depending on the OTC drug monograph involved, any interim marketing policy for additional conditions in § 330.14(h), will address the dosage form concentration, and other information of the condition being allowed interim marketing status.

E. Comments on Safety and Effectiveness

23. One comment believed that the absence of adverse experience reporting systems in foreign countries for either drugs or cosmetics should not preclude a condition from being considered GRAS/E. The comment added that there is nothing in the act or FDA regulations that makes the absence of such information determinative of a condition's status.

The agency agrees that the absence of an adverse experience reporting system in a foreign country for drugs or cosmetics does not necessarily mean that a condition cannot be GRAS/E. The GRAS/E determination will be based on the overall quality of the data and information presented to substantiate safety and effectiveness.

F. Comments on Specific Active Ingredients

24. One comment requested that the agency reverse the category II status of the sunscreen ingredient 3-(4-methylbenzylidene)-camphor (Eusolex 6300) and permit its marketing upon publication of the final rule. The comment based this request upon its updated citizen petition that addresses the eligibility criteria in the proposed rule and an established USP monograph for 3-(4-methylbenzylidene)-camphor. The comment asserted that the agency's decision to place Eusolex 6300 in category II and the subsequent 20 year delay in addressing the foreign marketing data in their citizen petition raise serious legal concerns under section 10 of the Administrative Procedure Act.

This comment is not directly related to this final rule. The agency discussed the status of this ingredient and its pending citizen petition in both the TMF (58 FR 28194 at 28210 to 28211, May 12, 1993) and the final monograph (64 FR 27666 at 27669 to 27670, May 21, 1999) for OTC sunscreen drug products, stating that a decision was needed on the use of foreign marketing data before this ingredient would be considered for inclusion in that monograph. With publication of this final rule, the sponsor may now submit a TEA for FDA to determine whether the condition is eligible for consideration in the OTC drug monograph system.

IV. Legal Authority

This final rule amending the agency's regulations to include criteria for additional conditions and procedures for classifying OTC drugs as GRAS/E and not misbranded is authorized by the act. Since passage of the act in 1938, submission of an NDA has been required before marketing a new drug (21 U.S.C. 355). Section 201(p) of the act defines a new drug as:

> (1) Any drug * * * the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, * * * or (2) Any drug * * * the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

To market a new drug, an NDA must be submitted to, and approved by, FDA before marketing. Only drugs that are not new drugs may be covered by an OTC drug monograph. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act. FDA's regulations under part 330 outline the requirements for OTC human drugs that are GRAS/E and not misbranded. New § 330.14 adds additional requirements.

V. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure of $100 million (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action as defined by the Executive order and so is subject to review. Although the agency does not believe that this rule will have a significant economic impact on a substantial number of small entities, there is some uncertainty with respect to the estimated future impact. Thus, a regulatory flexibility analysis is presented below.

A. Regulatory Benefits

The purpose of this final rule is to establish criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. Currently, a sponsor wishing to introduce into the United States an OTC drug condition marketed solely in a foreign country must prepare and submit an NDA. Likewise, companies with OTC drugs initially marketed in the United States after the 1972 initiation of the OTC drug review must have an NDA. This final rule provides procedures for these NDA drugs to become eligible for inclusion in the OTC drug monograph system by first submitting a TEA to show marketing "to a material extent" and "for a material time." Once determined eligible, safety and effectiveness data would be submitted and evaluated. This two-step process allows sponsors to demonstrate that eligibility criteria are met before having to expend resources to prepare safety and effectiveness data.

The flexibility to market drug products under FDA's OTC drug monograph system provides an overall net benefit to the companies seeking to use this approach, as well as to the American public. One important benefit to sponsoring companies is the saving of NDA user fees. The Prescription Drug User Fee Act (21 U.S.C. 379h) requires a one-time application fee for each NDA submitted, and yearly product and establishment fees, as applicable, for each NDA approved. For FY 2000, these

fees are $285,740 (applications with clinical data), $19,959, and $141,971, respectively. Therefore, one-time user fees of $285,740, and ongoing fees of up to $161,930 ($19,959 + $141,971) are avoided if the company can establish that the condition should be included in an OTC drug monograph.

Also, most manufacturers would experience a paperwork savings when seeking OTC drug monograph status instead of an NDA. For example, in most instances, the manufacturing controls information needed for submitting an NDA is not required for a monograph submission. Ongoing reporting requirements associated with periodic and annual reports are also avoided. Based on previous estimates of the paperwork hours needed to comply with these requirements and assuming a 33 percent reduction in paperwork activities, FDA estimates that eliminating manufacturing controls information from an application would bring a one-time savings of approximately 530 hours and an annual savings of 40 hours per submission. Applying the 1999 labor rate of $33.95 per hour for an industrial engineer (Ref. 3) (with a 40 percent adjustment for benefits), these one-time savings are approximately $17,994 (530 x $33.95/hour) per submission. Likewise, using the 1999 professional and managerial labor rate of $27.90 per hour (Ref. 3) (including a 40 percent benefit rate), the ongoing savings from the elimination of periodic and annual reports would equal approximately $1,116 (40 x $27.90/hour) per product.

Moreover, once a condition has been included in an OTC drug monograph, other companies could achieve similar benefits, as they would be permitted to enter the marketplace without submitting an NDA or an abbreviated NDA (ANDA), hereafter referred to as an application. These companies would also avoid the costs associated with achieving the inclusion of a condition in a monograph. In addition, these companies, as well as the sponsoring companies, would be permitted to market variations of a product, such as different product concentrations or dosage forms, if allowed by the monograph, saving the cost of an application or supplement when required.

Consumers would also benefit from this rule. As conditions not previously marketed in the United States obtain OTC drug monograph status, a greater selection of OTC drug products would become available. In addition, competition from these additional products may restrain prices for the entire product class.

B. Regulatory Costs

FDA estimates that the information needed for a TEA to meet the eligibility criteria for "material time" and "material extent" would take firms approximately 480 hours to prepare. Using the 1999 professional and managerial labor rate of $27.90 per hour (Ref. 3) (including a 40 percent benefit rate), this cost amounts to approximately $13,392 (480 hours x $27.90/hour) per submission. The costs associated with requiring publication in an official compendium, where applicable, would be minimal as similar information is often prepared for publication in a foreign pharmacopeia and most companies already have such standards as part of their manufacturing quality control procedures.

Considering the potential one-time cost savings described above of $303,734 ($285,740 + $17,994) associated with prescription drug user fees and reduced reporting requirements, FDA calculates a one-time net cost savings to industry of up to $290,342 ($303,734 - $13,392) per submission. Future yearly cost savings could total $21,075 ($19,959 + $1,116) per product and $141,971 per establishment if this were the establishment's only product. Accordingly, FDA estimates that if it receives 25 to 50 TEA submissions a year, the industry would save between $7.3 million and $14.5 million in one-time costs alone. The agency notes, however, that companies would submit conditions for OTC drug monograph status only where it would be profitable for them to do so.

Since 1991, the agency has approved six requests for the inclusion of post-1972 U.S. OTC drug conditions in a monograph. Four of these requests consisted of a previously unapproved concentration, dosage form, dual claim, and product combination without OTC marketing experience. Similar conditions are not allowed under the final rule without a minimum of 5 continuous years of adequate OTC marketing experience. These manufacturers would need to either market their product under an application for 5 years in the United States or have 5 years of sufficient marketing experience abroad to qualify for inclusion in a monograph. Accordingly, this rule could result in lost sales dollars for those few future applicants who, in the absence of this rule, might have successfully petitioned FDA to have a product with less than 5 years marketing experience included in a monograph. Likewise, other manufacturers would have to wait until either the agency includes the condition in a final monograph publication, or the agency evaluates the comments to a proposed rule to include a new condition in a TFM GRAS/E and then publishes a notice of enforcement policy allowing interim marketing, before they could market the product or a product variation without an application. Due to the limited number of requests approved to date, it is unlikely that many manufacturers will be significantly affected by these requirements.

C. Small Business Analysis

Although the agency believes that this rule is unlikely to have a significant economic impact on a substantial number of small entities, FDA is uncertain about the extent of the future impact. Therefore, the following regulatory flexibility analysis has been prepared.

1. Description and Objective of the Final Rule

As stated elsewhere in this preamble, the final rule makes it easier to market certain OTC drug products in the United States by amending current FDA regulations to include additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The additional criteria and procedures specify how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can meet the monograph eligibility requirements. Once eligibility has been determined for a particular condition, safety and effectiveness data are evaluated.

2. Description and Estimate of the Number of Small Entities

Census data provide aggregate industry statistics on the number of manufacturers of pharmaceutical preparations, but do not distinguish between manufacturers of prescription and OTC drug products. According to the Small Business Administration (SBA), manufacturers of pharmaceutical preparations with 750 or fewer employees are considered small entities. The U.S. Census does not disclose data on the number of drug manufacturing firms by employment size, but between 92 and 96 percent of drug manufacturing establishments, or approximately 650 establishments, are small under this definition (Ref. 4). Although the number of firms that are small would be less than the number of establishments, FDA still concludes that the majority of pharmaceutical

preparation manufacturing firms are small entities.

In addition, the agency finds that at least 400 firms manufacture U.S.-marketed OTC drug products. Using the SBA size designation, 31 percent of these firms are large, 46 percent are small, and size data are not available for the remaining 23 percent. Therefore, approximately 184 to 276 of the affected manufacturing firms may be considered small. The agency cannot project how many of these OTC drug manufacturers would submit a TEA for consideration of an additional condition in the OTC drug monograph system.

3. Description of Reporting, Recordkeeping, and Other Compliance Requirements

To demonstrate eligibility for consideration in the OTC drug monograph system, sponsors must submit data in a TEA showing that the condition has been marketed "for a material time" and "to a material extent." All companies who choose to be considered in the OTC drug monograph system must submit these data. FDA expects that all sponsoring companies employ or have ready access to individuals who possess the skills necessary for this data preparation.

4. Identification of Federal Rules that Duplicate, Overlap, or Conflict With the Final Rule

The agency is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the final rule.

5. Impact on Small Entities

As described above, some manufacturers could be adversely affected by the 5-year material extent and material time requirements, causing a loss in future sales dollars. The agency cannot quantify this impact. However, based on the limited number of post-1972 conditions approved to date that would not have met the 5-year material extent and material time requirements, FDA believes that few manufacturers will be significantly affected.

6. Analysis of Alternatives

In developing the requirements of this rule, the agency considered two alternatives. Initially, FDA contemplated a one-step evaluation process, where sponsors would submit safety and effectiveness data concurrently with their TEA. However, the agency decided that this process would be less efficient because it would require sponsoring companies to expend resources to prepare safety and effectiveness data before the agency determines whether eligibility criteria have been met.

The agency also considered allowing manufacturers of post-1972 U.S. OTC drugs to market prior to inclusion in a final OTC drug monograph, as long as the agency had tentatively determined that the condition is GRAS/E. However, to allow for thorough public consideration of any safety and effectiveness issues that might arise before broad marketing of the condition begins under the OTC drug monograph system, the agency proposed that interim marketing should not be allowed under the OTC drug monograph system either for post-1972 U.S. conditions or for conditions with no previous U.S. marketing experience. Under this final rule, the agency has determined for those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E and the agency has not changed its position as a result of the comments, that it will then publish a notice of enforcement policy to allow interim marketing. This enforcement notice will be similar to those used in the original OTC drug review and will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. Interim marketing under these circumstances will also be dependent upon completion of official USP–NF monograph standards, as discussed above. For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing will not be allowed. Under these circumstances, the agency expects that it would take the same amount of time to include the condition in a final monograph as it would to publish an enforcement notice.

7. Response to Comments

In response to public comment, the agency simplified the TEA criteria and decided to publish an enforcement notice to permit interim marketing when the finalization of the OTC drug monograph is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM and the agency has not changed its position as a result of the comments. Several comments stated that the TEA is unduly burdensome because the required information is both unnecessarily detailed and difficult to compile. The final rule modifies how information should be provided on the number of dosage units sold, clarifies the criteria for determining marketing exposure, and revises the historical labeling requirements. These changes will further define the information that is necessary for the agency to determine whether the condition has been marketed to a material extent and for a material time. The agency still estimates that it will take 480 hours to prepare a TEA.

A number of comments disagreed with the proposed interim marketing policy. The comments asserted that interim marketing should be allowed, and that it should be left up to individual OTC manufacturers to determine whether the revenue and product recognition lost from the proposed restrictions on interim marketing would outweigh any potential costs of relabeling resulting from the final monograph. Therefore, for those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E, and the agency has not changed its position as a result of the comments, the agency will publish a notice of enforcement policy to allow interim marketing. This notice will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. Thus, in these cases, manufacturers can assess revenues and projected costs versus potential costs if relabeling, recall, or other regulatory action results from the final monograph. For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing still will not be allowed. However, under these circumstances, the agency expects that it would take the same amount of time to include the condition in a final monograph as it would to publish an enforcement notice. Therefore, OTC manufacturers should be able to begin marketing their product under a final rule in the same amount of time that they would have had to wait for the agency to issue an enforcement notice.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this final rule is not expected to result in any 1-year

expenditure that would exceed $100 million adjusted for inflation.

This analysis shows that the agency has considered the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

VII. Paperwork Reduction Act of 1995

This final rule contains collections of information which are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). "Collection of information" includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In the proposal, FDA invited comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology. The agency did not receive any specific comments on these items.

Title: Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded.

Description: FDA is finalizing additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience could meet the statutory definition of marketing "to a material extent" and "for a material time" and become eligible. If found eligible, the condition will be evaluated for general recognition of safety and effectiveness in accord with FDA's OTC drug monograph regulations.

FDA received no comments on the Paperwork Reduction Act section of the proposed rule. However, OMB has requested, in its review of FDA's request for approval of the proposed information collection resulting from this rulemaking, that FDA look into the possibility of applying electronic collection techniques to this collection. There is no requirement in this rulemaking that sponsors submit TEAs electronically. However, the Center for Drug Evaluation and Research has issued the following guidances to facilitate the electronic submission of marketing applications: "Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations" and "Guidance for Industry: Providing Regulatory Submissions in Electronic Format—NDA's." These guidances were issued in January 1999 and are available at http://www.fda.gov/cder/guidance/index.htm. Also available at this Internet site is a document entitled "Example of an Electronic New Drug Application Submission." These guidances provide recommendations for submitting electronic submissions in the appropriate format. Sponsors should refer to the formatting recommendations in these guidances if they wish to submit a TEA electronically.

Concerning the electronic submission of information to the Dockets Management Branch, over the last several months the Dockets Management Branch has been accepting comments electronically on specific dockets as part of a pilot program. An Internet address and an e-mail address have been set up to accept these comments. Parties may submit comments to the Dockets Management Branch through the Internet or e-mail at: http://www.fda.gov/ohrms/dockets/default.htm. Parties should then select "submit electronic comments" and follow the directions. Over the next several years, FDA expects to be able to accept electronic submissions of TEAs and safety and effectiveness data, which would eliminate the need for multiple paper copies.

Current § 330.10(a)(2) sets forth the requirements for the submission of data and information that FDA reviews to evaluate a drug for general recognition of safety and effectiveness. FDA receives approximately three safety and effectiveness submissions each year, and FDA estimates that it takes approximately 798 hours to prepare each submission.

FDA anticipates that the number of safety and effectiveness submissions would increase to 93 annually as a result of this rulemaking. (Although FDA estimates that the number of TEAs submitted annually would be 50, the agency anticipates that 30 TEAs would be approved, and that this would result in approximately 3 safety and effectiveness submissions for each approved TEA.) The time required to prepare each safety and effectiveness submission would also increase as a result of two amendments to current § 330.10(a)(2) under this final rule.

One amendment revises items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 of the "OTC Drug Review Information" format and content requirements to add the words "Identify common or frequently reported side effects" after "documented case reports." This revision clarifies current requirements for submitting documented case reports and only requires sponsors to ensure that side-effects information is identified in each submission. FDA estimates that it will take sponsors approximately 1 hour to comply with this requirement.

A second amendment to current § 330.10(a)(2) requires sponsors to submit an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). (This requirement is also stated in § 330.14(f)(1).) FDA believes that the burden associated with this requirement will also be minimal because similar information may already have been prepared for previous publication in a foreign pharmacopeia, or companies will already have these standards as part of their quality control procedures for manufacturing the product. FDA estimates that the time required to photocopy this material will be approximately 1 hour.

Thus, the time required for preparing each safety and effectiveness submission will increase by a total of 2 hours as a result of the amendments to § 330.10(a)(2), increasing the approximate hours for each submission from 798 to 800 hours.

Under § 330.14(c), sponsors must submit a TEA when requesting that a condition subject to the regulation be considered for inclusion in the OTC drug monograph system. Based on the data provided and explained in the "Analysis of Impacts" in section V above, FDA estimates that approximately 50 TEAs will be submitted to FDA annually by approximately 25 sponsors, and the time required for preparing and submitting each TEA will be approximately 480 hours.

Under § 330.14(f)(2), sponsors are required to include in each safety and effectiveness submission all serious ADEs from each country where the condition has been or is currently marketed as a prescription or OTC drug product. Sponsors will be required to provide individual ADE reports along with a detailed summary of all serious ADEs and expected or frequently reported side effects for the condition. FDA believes that the burden associated with this requirement will be minimal because individual ADE reports are already required as part of the "documented case reports" in the "OTC Drug Review Information" under § 330.10(a)(2). FDA estimates that the time required for preparing and submitting a detailed summary of all serious ADEs and expected or frequently reported side effects will be approximately 2 hours.

Due to the anticipated number of foreign conditions likely to seek immediate consideration in the OTC drug monograph system, the annual reporting burden estimated in table 1 below is the annual reporting for the first 3 years following publication of the final rule. FDA anticipates a reduced burden after this time period.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
330.10(a)(2) (safety and effectiveness submission)	93	1	93	800	74,400
330.14(c) (time and extent application)	25	2	50	480	24,000
330.14(f)(2) (adverse drug experience reports)	90	1	90	2	180
Total					98,580

The information collection provisions of the final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. 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.

VIII. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C20, Docket No. 96N–0277, Dockets Management Branch.

2. Comment No. C24, Docket No. 96N–0277, Dockets Management Branch.

3. "1999 Occupational Earnings Data," U.S. Department of Labor, Bureau of Labor Statistics, ftp://ftp.bls.gov/pub/special.requests/lf/att39.txt, April 26, 2000.

4. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, "Industry Series Drugs," 1992 Census of Manufactures, Table 4, p. 28C–12.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 330 is amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 330.10 is amended as follows:

a. In paragraph (a)(2) by adding the words "or until the Commissioner places the panel's recommendations on public display at the office of the Dockets Management Branch" at the end of the second sentence;

b. In paragraph (a)(2) by adding the words "Identify expected or frequently reported side effects." after the words "Documented case reports." in items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 in the outline of "OTC Drug Review Information"; and

c. In paragraph (a)(2) by adding item VII at the end of the outline of "OTC Drug Review Information";

d. In paragraph (a)(5) introductory text by removing the word "shall" and adding in its place the word "may";

e. In paragraphs (a)(5)(ii) and (a)(5)(iii) by removing the word "all" from the first sentence;

f. In paragraphs (a)(6)(i) and (a)(9) by removing the word "is" and adding in its place the words "or a specific or specific OTC drugs are";

g. In paragraph (a)(6)(iv) by removing the word "quintuplicate" and by adding in its place "triplicate" in the forth full sentence, by removing the words "during regular working hours" and by adding in their place "between the hours of 9 a.m. and 4 p.m." in the sixth full sentence, and by adding two sentences at the end.

h. In paragraph (a)(7)(i) by revising the first and second sentences;

i. In paragraph (a)(7)(ii) by removing the first and second sentences and by adding three sentences in their places;

j. In paragraph (a)(10)(i) and (a)(10)(iii) by adding in the first sentence a comma and the phrase "in response to any other notice published in the **Federal Register**," after the phrase "paragraph (a)(2) of this section"; and

k. In paragraph (a)(12)(i) in the fourth sentence by removing the number "60" and by adding in its place the number "90" and by removing the word "quadruplicate" and by adding in its place the word "triplicate" to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

(a) * * *

(2) * * *

OTC DRUG REVIEW INFORMATION

* * * * *

VII. An official United States Pharmacopeia (USP)–National Formulary (NF) drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). Include information showing that the official or proposed compendial monograph for the active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance used in the studies establishing safety and effectiveness and with the active ingredient or botanical drug substance marketed in the OTC product(s) to a material extent and for a material time. If differences exist, explain why.

* * * * *

(6) * * *

(iv) * * * Alternatively, the Commissioner may satisfy this requirement by placing the panel's recommendations and the data it considered on public display at the office of the Dockets Management Branch and publishing a notice of their availability in the **Federal Register**. This notice of availability may be included as part of the tentative order in accord with paragraph (a)(7) of this section.

(7) * * *

(i) After reviewing all comments, reply comments, and any new data and information or, alternatively, after reviewing a panel's recommendations, the Commissioner shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs or specific OTC drugs are generally recognized as safe and effective and not misbranded. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written comments or written objections specifying with particularity the omissions or additions requested. * * *

(ii) The Commissioner may also publish in the **Federal Register** a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may be published when no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration under paragraph (a)(6)(iv) of this section or when the Commissioner has evaluated and concurs with a panel's recommendation that a condition be excluded from the monograph. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. * * *

* * * * *

3. Section 330.13 is amended by adding paragraph (e) to read as follows:

§ 330.13 Conditions for marketing ingredients recommended for over-the-counter (OTC) use under the OTC drug review.

* * * * *

(e) This section applies only to conditions under consideration as part of the OTC drug review initiated on May 11, 1972, and evaluated under the procedures set forth in § 330.10. Section 330.14(h) applies to the marketing of all conditions under consideration and evaluated using the criteria and procedures set forth in § 330.14.

4. Section 330.14 is added to subpart B to read as follows:

§ 330.14 Additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded.

(a) *Introduction.* This section sets forth additional criteria and procedures by which over the counter (OTC) drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. This section also addresses conditions regulated as a cosmetic or dietary supplement in a foreign country that would be regulated as OTC drugs in the United States. For purposes of this section, "condition" means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use, except as excluded in paragraph (b)(2) of this section. For purposes of this part, "botanical drug substance" means a drug substance derived from one or more plants, algae, or macroscopic fungi, but does not include a highly purified or chemically modified substance derived from such a source.

(b) *Criteria.* To be considered for inclusion in the OTC drug monograph system, the condition must meet the following criteria:

(1) The condition must be marketed for OTC purchase by consumers. If the condition is marketed in another country in a class of OTC drug products that may be sold only in a pharmacy, with or without the personal involvement of a pharmacist, it must be established that this marketing restriction does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(2) The condition must have been marketed OTC for a minimum of 5 continuous years in the same country and in sufficient quantity, as determined in paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this section. Depending on the condition's extent of marketing in only one country with 5 continuous years of marketing, marketing in more than one country may be necessary.

(c) *Time and extent application.* Certain information must be provided when requesting that a condition subject to this section be considered for inclusion in the OTC drug monograph system. The following information must be provided in the format of a time and extent application (TEA):

(1) Basic information about the condition that includes a description of the active ingredient(s) or botanical drug substance(s), pharmacologic class(es), intended OTC use(s), OTC strength(s) and dosage form(s), route(s) of administration, directions for use, and the applicable existing OTC drug monograph(s) under which the condition would be marketed or the request and rationale for creation of a new OTC drug monograph(s).

(i) A detailed chemical description of the active ingredient(s) that includes a full description of the drug substance, including its physical and chemical characteristics, the method of synthesis (or isolation) and purification of the drug substance, and any specifications and analytical methods necessary to ensure the identity, strength, quality, and purity of the drug substance.

(ii) For a botanical drug substance(s), a detailed description of the botanical ingredient (including proper identification of the plant, plant part(s), alga, or macroscopic fungus used; a certificate of authenticity; and information on the grower/supplier, growing conditions, harvest location and harvest time); a qualitative description (including the name, appearance, physical/chemical properties, chemical constituents, active constituent(s) (if known), and biological activity (if known)); a quantitative description of the chemical

constituents, including the active constituent(s) or other chemical marker(s) (if known and measurable); the type of manufacturing process (*e.g.*, aqueous extraction, pulverization); and information on any further processing of the botanical substance (*e.g.*, addition of excipients or blending).

(iii) Reference to the current edition of the U.S. Pharmacopeia (USP)–National Formulary (NF) or foreign compendiums may help satisfy the requirements in this section.

(2) A list of all countries in which the condition has been marketed. Include the following information for each country. (For a condition that has been marketed OTC in 5 or more countries with a minimum of 5 continuous years of marketing in at least one country, the sponsor may submit information in accordance with paragraph (c)(4) of this section):

(i) How the condition has been marketed (e.g., OTC general sales direct-to-consumer; sold only in a pharmacy, with or without the personal involvement of a pharmacist; dietary supplement; or cosmetic). If the condition has been marketed as a nonprescription pharmacy-only product, establish that this marketing restriction does not indicate safety concerns about its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(ii) The cumulative total number of dosage units (e.g., tablets, capsules, ounces) sold for each dosage form of the condition. Manufacturers or suppliers of OTC active ingredients may provide dosage unit information as the total weight of active ingredient sold. List the various package sizes for each dosage form in which the condition is marketed OTC. Provide an estimate of the minimum number of potential consumer exposures to the condition using one of the following calculations:

(A) Divide the total number of dosage units sold by the number of dosage units in the largest package size marketed, or

(B) Divide the total weight of the active ingredient sold by the total weight of the active ingredient in the largest package size marketed.

(iii) A description of the population demographics (percentage of various racial/ethnic groups) and the source(s) from which this information has been compiled, to ensure that the condition's use(s) can be reasonably extrapolated to the U.S. population.

(iv) If the use pattern (*i.e.*, how often it is to be used (according to the label) and for how long) varies between countries based on the condition's packaging and labeling, or changes in use pattern have occurred over time in one or more countries, describe the use pattern for each country and explain why there are differences or changes.

(v) A description of the country's system for identifying adverse drug experiences, especially those found in OTC marketing experience, including method of collection if applicable.

(3) A statement of how long the condition has been marketed in each country and how long the current product labeling has been in use, accompanied by a copy of the current product labeling. All labeling that is not in English must be translated to English in accordance with § 10.20(c)(2) of this chapter. State whether the current product labeling has or has not been authorized, accepted, or approved by a regulatory body in each country where the condition is marketed.

(4) For a condition that has been marketed OTC in five or more countries with a minimum of 5 continuous years of marketing in at least one country, the sponsor may select at least five of these countries from which to submit information in accord with paragraphs (c)(2)(i) through (c)(2)(iv) of this section. Selected countries must include the country with a minimum of 5 continuous years of OTC marketing, countries that have the longest duration of marketing, and countries having the most support for extent of marketing, i.e., a large volume of sales with cultural diversity among users of the product. If the condition meets these criteria in countries listed in section 802(b)(1)(A) of the Federal Food, Drug, and Cosmetic Act, some of these countries should be included among the five selected. Sponsors should provide information from more than five countries if they believe that it is needed to support eligibility. Sponsors should explain the basis for the countries selected in the TEA.

(5) A list of all countries where the condition is marketed only as a prescription drug and the reasons why its marketing is restricted to prescription in these countries.

(6) A list of all countries in which the condition has been withdrawn from marketing or in which an application for OTC marketing approval has been denied. Include the reasons for such withdrawal or application denial.

(7) The information requested in paragraphs (c)(2), (c)(2)(i) through (c)(2)(iv), and (c)(3) of this section must be provided in a table format. The labeling required by paragraph (c)(3) of this section must be attached to the table.

(8) For OTC drugs that have been marketed for more than 5 years in the United States under a new drug application, the information requested in paragraphs (c)(2)(i), (c)(2)(iii), (c)(2)(v), (c)(3), and (c)(5) of this section need not be provided.

(d) *Submission of information; confidentiality.* The sponsor must submit three copies of the TEA to the Central Document Room, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The Food and Drug Administration will handle the TEA as confidential until such time as a decision is made on the eligibility of the condition for consideration in the OTC drug monograph system. If the condition is found eligible, the TEA will be placed on public display in the Dockets Management Branch after deletion of information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Sponsors must identify information that is considered confidential under these statutory provisions. If the condition is not found eligible, the TEA will not be placed on public display, but a letter from the agency to the sponsor stating why the condition was not found acceptable will be placed on public display in the Dockets Management Branch.

(e) *Notice of eligibility.* If the condition is found eligible, the agency will publish a notice of eligibility in the **Federal Register** and provide the sponsor and other interested parties an opportunity to submit data to demonstrate safety and effectiveness. When the notice of eligibility is published, the agency will place the TEA on public display in the Dockets Management Branch.

(f) *Request for data and views.* The notice of eligibility shall request interested persons to submit published and unpublished data to demonstrate the safety and effectiveness of the condition for its intended OTC use(s). These data shall be submitted to a docket established in the Dockets Management Branch and shall be publicly available for viewing at that office, except data deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Data considered confidential under these provisions must be clearly identified. Any proposed compendial standards for the condition shall not be considered confidential. The safety and effectiveness submissions shall include the following:

(1) All data and information listed in § 330.10(a)(2) under the outline "OTC Drug Review Information," items III through VII.

(2) All serious adverse drug experiences as defined in §§ 310.305 and 314.80 of this chapter, from each

country where the condition has been or is currently marketed as a prescription drug or as an OTC drug or product. Provide individual adverse drug experience reports (FDA Form 3500A or equivalent) along with a summary of all serious adverse drug experiences and expected or frequently reported side effects for the condition. Individual reports that are not in English must be translated to English in accordance with § 10.20(c)(2) of this chapter.

(g) *Administrative procedures.* The agency may use an advisory review panel to evaluate the safety and effectiveness data in accord with the provisions of § 330.10(a)(3). Alternatively, the agency may evaluate the data in conjunction with the advisory review panel or on its own without using an advisory review panel. The agency will use the safety, effectiveness, and labeling standards in § 330.10(a)(4)(i) through (a)(4)(vi) in evaluating the data.

(1) If the agency uses an advisory review panel to evaluate the data, the panel may submit its recommendations in its official minutes of meeting(s) or by a report under the provisions of § 330.10(a)(5).

(2) The agency may act on an advisory review panel's recommendations using the procedures in §§ 330.10(a)(2) and 330.10(a)(6) through (a)(10).

(3) If the condition is initially determined to be generally recognized as safe and effective for OTC use in the United States, the agency will propose to include it in an appropriate OTC drug monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary.

(4) If the condition is initially determined not to be generally recognized as safe and effective for OTC use in the United States, the agency will inform the sponsor and other interested parties who have submitted data of its determination by letter, a copy of which will be placed on public display in the docket established in the Dockets Management Branch. The agency will publish a notice of proposed rulemaking to include the condition in § 310.502 of this chapter.

(5) Interested parties will have an opportunity to submit comments and new data. The agency will subsequently publish a final rule (or reproposal if necessary) in the **Federal Register**.

(h) *Marketing.* A condition submitted under this section for consideration in the OTC drug monograph system may be marketed in accordance with an applicable final OTC drug monograph(s) only after the agency determines that the condition is generally recognized as safe and effective and includes it in the appropriate OTC drug final monograph(s), and the condition complies with paragraph (i) of this section. When an OTC drug monograph has not been finalized and finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a tentative final monograph as generally recognized as safe and effective and the agency has not changed its position as a result of the comments, and the condition complies with paragraph (i) of this section, the agency may publish a notice of enforcement policy that allows marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action.

(i) *Compendial monograph.* Any active ingredient or botanical drug substance included in a final OTC drug monograph or the subject of an enforcement notice described in paragraph (h) of this section must be recognized in an official USP–NF drug monograph that sets forth its standards of identity, strength, quality, and purity. Sponsors must include an official or proposed compendial monograph as part of the safety and effectiveness data submission listed in § 330.10(a)(2) under item VII of the outline entitled "OTC DRUG REVIEW INFORMATION."

Dated: January 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1457 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53, 301, and 602

[TD 8978]

RIN 1545–AY65

Excise Taxes on Excess Benefit Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code, as well as certain amendments and additions to existing Income Tax Regulations affected by section 4958. Section 4958 was enacted by the Taxpayer Bill of Rights 2. Section 4958 imposes excise taxes on any transaction that provides excess economic benefits to a person in a position to exercise substantial influence over the affairs of a public charity or a social welfare organization.

DATES: *Effective Date:* These regulations are effective January 23, 2002.

Applicability Date: These regulations apply as of January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1623. Responses to these collections of information are required to obtain the benefit of the rebuttable presumption that a transaction is reasonable or at fair market value.

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 control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper varies from 3 hours to 308 hours, depending on individual circumstances, with an estimated weighted average of 6 hours, 3 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 4958 was added to the Internal Revenue Code (Code) by the Taxpayer Bill of Rights 2, Public Law 104–168 (110 Stat. 1452), enacted July 30, 1996. The section 4958 excise taxes generally apply to excess benefit

transactions occurring on or after September 14, 1995. Any disqualified person who benefits from an excess benefit transaction with an applicable tax-exempt organization is liable for a tax of 25 percent of the excess benefit. The person is also liable for a tax of 200 percent of the excess benefit if the excess benefit is not corrected by a certain date. A *disqualified person* is generally defined as a person in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization. An *applicable tax-exempt organization* is an organization described in Code section 501(c)(3) or (4) and exempt from tax under section 501(a). Additionally, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax of 10 percent of the excess benefit. The tax for which all participating organization managers are liable cannot exceed $10,000 for any one excess benefit transaction.

On August 4, 1998, a notice of proposed rulemaking (REG–246256–96) clarifying certain definitions and rules contained in section 4958 was published in the **Federal Register** (63 FR 41486). The IRS received numerous written comments responding to this notice. A public hearing was held on March 16 and 17, 1999. Those proposed regulations were revised in response to written and oral comments, and replaced by temporary regulations (TD 8920, 66 FR 2144) and a cross-referencing notice of proposed rulemaking (REG–246256–96, 66 FR 2173) on January 10, 2001. A few written comments were received in response to the notice of proposed rulemaking of January 10, 2001. A public hearing was held July 31, 2001. After consideration of all comments received, the January 2001 cross-referencing proposed regulations under section 4958 are revised and published in final form, and the temporary regulations removed. The major areas of the comments and revisions are discussed below.

Explanation and Summary of Comments

Tax Paid by Organization Managers

Organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax equal to 10 percent of the excess benefit. The temporary regulations provide that an organization manager's participation in an excess benefit transaction will ordinarily not be considered *knowing* to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For this purpose, appropriate professionals are legal counsel (including in-house counsel), certified public accountants or accounting firms with expertise regarding the relevant tax law matters, and independent valuation experts who meet specified requirements. Oral comments at the public hearing objected to this safe harbor, suggesting instances of the unreliability of appraisers and accountants. The final regulations retain this safe harbor. The IRS and the Treasury Department believe that an organization manager who has sought and relied upon an appropriate professional opinion has not "fail[ed] to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction", which is a required element of *knowing* for this purpose.

The temporary regulations provide an additional safe harbor: that an organization manager's participation in a transaction will ordinarily not be considered *knowing* if the manager relies on the fact that the requirements giving rise to the *rebuttable presumption of reasonableness* are satisfied with respect to the transaction. Several comments were received requesting that the safe harbor be modified, either to apply if the organization manager "reasonably believes" that the requirements for the presumption are satisfied, or to eliminate the reliance requirement. In response to these comments, the final regulations no longer require that the organization manager rely on the fact that the requirements of the rebuttable presumption of reasonableness are satisfied. The final regulations state that the organization manager's participation in a transaction will ordinarily not be considered *knowing* if the appropriate authorized body has met the requirements of the rebuttable presumption with respect to the transaction. The IRS and the Treasury Department note that the relief given by this provision is only a safe harbor, so that failure to satisfy its requirements does not necessarily mean that the organization manager acted knowingly.

Definition of Applicable Tax-Exempt Organization

The temporary regulations provide that any governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) is not an applicable tax-exempt organization for purposes of section 4958. A comment was received requesting that the final regulations clarify whether section 115 entities are excepted from the definition of *applicable tax-exempt organization*. Because section 115 exempts certain income, and not the entity itself, the reference in the temporary regulations to any governmental entity "exempt from tax" without regard to section 501(a) is unclear. The final regulations provide that for purposes of section 4958, a governmental unit or an affiliate of a governmental unit is not an *applicable tax-exempt organization* if it is: (1) Exempt from (or not subject to) taxation without regard to section 501(a); or (2) relieved from filing an annual return pursuant to the authority of Treasury Regulations under section 6033.

Regulations under section 6033 grant the Commissioner authority to relieve organizations from filing an annual return required by that section in cases where the returns are not necessary for the efficient administration of the internal revenue laws. Under this authority, Rev. Proc. 95–48 (1995–2 C.B. 418) relieves "governmental units" and certain "affiliates of governmental units" from the annual filing requirement. A *governmental unit* as defined in this revenue procedure already falls within the exception provided in the section 4958 temporary regulations for "any governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a)". An *affiliate of a governmental unit* that is relieved from filing an annual return by Rev. Proc. 95–48 (and thus also excepted from the definition of an *applicable tax-exempt organization* under these section 4958 final regulations) includes any organization described in section 501(c) that has a ruling or determination from the IRS that: (1) Its income, derived from activities constituting the basis for its exemption under section 501(c), is excluded from gross income under section 115; (2) it is entitled to receive deductible charitable contributions under section 170(c)(1) on the basis that the contributions are "for the use of" governmental units; or (3) it is a wholly owned instrumentality of a State for employment tax purposes. An organization described in section 501(c) that does not have such a ruling or determination may also qualify as an *affiliate of a governmental unit* for purposes of the revenue procedure if: (1) It is either "operated, supervised, or controlled by" governmental units within the meaning of regulations under

section 509; (2) it possesses at least two affiliation factors listed in Rev. Proc. 95–48; and (3) its filing of Form 990, "Return of Organization Exempt From Income Tax", is not otherwise necessary to the efficient administration of the internal revenue laws.

A comment was also received requesting that the final regulations exclude from the definition of *applicable tax-exempt organization* collectively bargained apprenticeship funds subject to the rules of the Labor Management Relations Act of 1947 (61 Stat. 157) and the Employee Retirement Income Security Act of 1974 (88 Stat. 854) (ERISA). The commenter stated that, like governmental entities, these funds seek recognition under Code section 501(c)(3) on a strictly voluntary basis, and are also eligible for tax exemption under Code section 501(c)(5). The commenter also stated that applying section 4958 to these funds would provide an unnecessary layer of regulation, because these plans already are subject to ERISA.

The final regulations do not except collectively bargained apprenticeship funds from the definition of *applicable tax-exempt organization*. However, in response to this comment, the final regulations provide a special exception under section 4958 for transactions that are covered by a final individual prohibited transaction exemption issued by the Department of Labor. The final regulations provide that section 4958 does not apply to any payment made pursuant to, and in accordance with, a final individual prohibited transaction exemption issued by the Department of Labor under ERISA with respect to a transaction involving a plan that is an applicable tax-exempt organization. Before granting an individual prohibited transaction exemption under ERISA, the Department of Labor must determine that the particular transaction is in the interests of the plan and its participants, and is protective of the rights of participants in the plan. The IRS and the Treasury Department believe that the similarity between the ERISA standard ("in the interests of" and "protective of the rights of" participants) and the fair market value standard of section 4958 warrants this special exception.

Definition of Disqualified Person

The preamble of the temporary regulations noted that the IRS and the Treasury Department considered adopting a special rule with respect to so-called *donor-advised funds* maintained by applicable tax-exempt organizations, and requested comments regarding potential issues raised by applying the fair market value standard of section 4958 to distributions from a donor-advised fund to (or for the use of) the donor or advisor. Several comments were received on this issue. Most of the comments objected to treating a donor or advisor to this type of fund as a disqualified person based solely on influence over a donor-advised fund. Others stated that the existing factors contained in the temporary regulations were adequate to find disqualified person status in appropriate circumstances. One commenter requested that if section 4958 were to apply to transactions involving donor-advised funds, the fair market standard should apply, and requested additional definitions and exclusions if the final regulations contained specific rules for these types of funds.

In response to these comments, the final regulations do not adopt a special rule regarding any donor or advisor to a donor-advised fund. Thus, the general rules of § 53.4958–3 will apply to determine if a donor or advisor is a disqualified person.

Some additional comments were received on other specific rules of the *disqualified person* definition contained in the temporary regulations. The final regulations do not change the rules or descriptions contained in the definition. However, several of the comments are discussed below to explain why the IRS and the Treasury Department concluded that changes were not necessary or desirable. Other comments suggested changes to the examples. In response to those comments, several examples in this section of the final regulations were revised from the temporary regulations, as discussed below.

The temporary regulations state that an organization described in section 501(c)(4) is deemed not to have substantial influence with respect to another applicable tax-exempt organization described in section 501(c)(4). A section 501(c)(4) organization can, however, have substantial influence with respect to an organization described in section 501(c)(3). A commenter requested that section 501(c)(4) organizations be excluded from disqualified person status with respect to all applicable tax-exempt organizations.

The IRS and the Treasury Department decline to expand the exclusion for section 501(c)(4) organizations. A section 501(c)(4) organization can engage in certain activities (such as political campaign activities) that a section 501(c)(3) organization cannot. Accordingly, the IRS and the Treasury Department are concerned about transactions in which a section 501(c)(3) organization may provide an excess benefit to a section 501(c)(4) organization to avoid limitations of section 501(c)(3).

Oral comments at the public hearing objected to including, as one of the factors tending to show no substantial influence, the fact that the person's sole relationship to an applicable tax-exempt organization is as a contractor (such as an attorney, accountant, or investment manager or advisor) providing professional advice to the organization. The commenter suggested that these providers of professional advice have a great deal of influence over applicable tax-exempt organizations, but choose not to exercise that influence. The IRS and the Treasury Department believe that the description of this factor in the temporary regulations includes sufficient safeguards to protect the organization. Accordingly, the final regulations retain this factor. Additionally, being in this category of persons is merely a factor tending to show no substantial influence. In appropriate circumstances, the IRS could still conclude that a person ostensibly described in this category was a disqualified person based on all relevant facts and circumstances.

Another comment objected to the standard of one of the factors tending to show substantial influence: that a person's compensation is primarily based on revenues derived from activities of the organization that the person controls. The commenter suggested that this factor be modified to provide that revenues controlled by the person also represent a substantial part of the organization's total revenues. The IRS and the Treasury Department do not believe that a change is necessary. The factor at issue is only one of many factors that may be considered, and will be considered in conjunction with all relevant facts and circumstances.

Another comment requested further revision to two factors tending to show substantial influence. The first factor states that the person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees. The second factor states that the person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization, as compared to the organization as a whole. The commenter suggested that the first factor is sufficient, and requested that the second factor be deleted. Alternatively, the commenter requested that the final regulations define the term *substantial*,

and recommended a safe harbor percentage of 15 percent.

The IRS and the Treasury Department did not revise these two factors tending to show substantial influence. The IRS and the Treasury Department do not believe that these two factors are redundant, as they address budget and management authority, respectively, and these two functions may reside in different persons. In addition, as with any of the listed factors, these two factors are considered along with all other relevant facts and circumstances.

In response to a comment regarding the examples of this section, the final regulations revise an example that concludes that a hospital management company is a disqualified person with respect to the applicable tax-exempt organization. The comment stated that the example could create confusion because its language does not match neatly with the factors tending to show substantial influence listed in the temporary regulations. The commenter also pointed out that, under the facts of the example, the functions of the management company seemed close to those of a president, chief executive officer, or chief operating officer, one of the categories of persons who are deemed to have substantial influence. The example is revised in the final regulations to illustrate that the management company is a disqualified person *per se*, because it has ultimate responsibility for supervising the management of the hospital, consistent with the regulatory description of the functions of a president, chief executive officer, or chief operating officer. By concluding that the management company is a disqualified person, this example also addresses a comment requesting that final regulations clarify whether only individuals could be persons having substantial influence.

Economic Benefit Provided Indirectly

One comment analyzed examples in the temporary regulations defining an indirect excess benefit transaction. The commenter questioned one example in which the benefits provided to a disqualified person by an applicable tax-exempt organization and an entity controlled by the organization are evaluated in the aggregate, and the excess over reasonable compensation for the services performed by the disqualified person for both entities is treated as an excess benefit. The commenter recommended that the example be deleted or revised so that the reasonableness of compensation provided by each entity is evaluated separately.

The rules governing an indirect excess benefit transaction are intended to prevent an applicable tax-exempt organization from avoiding section 4958 by using a controlled entity to provide excess benefits to a disqualified person. Thus, for purposes of section 4958, economic benefits provided by a controlled entity will be treated as provided by the applicable tax-exempt organization. Likewise, the IRS and the Treasury Department believe that any services performed by the disqualified person for a controlled entity should be taken into account in determining the reasonableness of compensation paid by the applicable tax-exempt organization. Accordingly, this example is not changed in the final regulations. However, the IRS and the Treasury Department agree with the commenter that the payment of compensation by an applicable tax-exempt organization to a disqualified person for services provided to a controlled entity, other than a wholly-owned subsidiary, may raise private benefit issues if the other investors in the entity do not make a proportional contribution. Accordingly, another example in this section is modified to clarify that the controlled entity for which the disqualified person performs services is a wholly-owned subsidiary of the applicable tax-exempt organization.

Initial Contract Exception

The temporary regulations provide that section 4958 does not apply to any *fixed payment* made to a person pursuant to an *initial contract*, regardless of whether the payment would otherwise constitute an excess benefit transaction. For this purpose, an *initial contract* is defined as a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person immediately prior to entering into the contract. A *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies (e.g., revenues generated by activities of the organization), provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment. The temporary regulations include examples to illustrate the application of the initial contract rule.

Several comments were received on this section of the temporary regulations, including comments on specific examples. Several commentators requested a more liberal definition of *initial contract*. For instance, requests were received to extend the initial contract exception to cases where there is other contemporaneous written evidence of the terms of employment (but not a binding contract), or for the rule to cover cases where the parties agree to substantial terms of the person's employment, but where a final contract has not been signed before the person begins performing services for the organization. As the term *binding written contract* is governed by State law, in some cases that term may in fact be satisfied by an exchange of writings indicating the substantial terms of an agreement. However, the IRS and the Treasury Department decline to revise the regulatory definition of this term from that contained in the temporary regulations.

One commenter at the public hearing requested that the final regulations eliminate the initial contract exception. In this commenter's view, the Seventh Circuit in *United Cancer Council, Inc.* v. *Commissioner of Internal Revenue*, 165 F.3d 1173 (7th Cir. 1999), *rev'ing and remanding* 109 T.C. 326 (1997), focused on the wrong moment in time to determine insider status (analogous to disqualified person status under section 4958). The commenter suggested that a person's insider status should be determined at the time payments are made to the person. Therefore, the commenter recommended that the IRS and the Treasury Department decline to follow the reasoning of the Seventh Circuit's decision in the *United Cancer Council* case in the final regulations. Alternatively, the commenter requested that, if the initial contract exception is retained in the section 4958 final regulations, the IRS and the Treasury Department revise the private benefit standard under the section 501(c)(3) regulations to require that any private benefit conferred by a transaction must be insubstantial relative to the public benefit resulting from the transaction (rather than the public benefit resulting from the organization's overall activities).

Although the *United Cancer Council* case addressed the issue of private inurement under the standards of section 501(c)(3) in connection with revocation of the organization's tax exemption, the temporary regulations address the concerns expressed in the Seventh Circuit's opinion in *United Cancer Council* in the context of section 4958. The Seventh Circuit concluded that prohibited inurement under section

501(c)(3) cannot result from a contractual relationship negotiated at arm's length with a party having no prior relationship with the organization, regardless of the relative bargaining strength of the parties or resultant control over the tax-exempt organization created by the terms of the contract. The temporary regulations provide that, to the extent that an applicable tax-exempt organization and a person who is not yet a disqualified person enter into a binding written contract that specifies the amounts to be paid to the person (or specifies an objective formula for calculating those amounts), those fixed payments are not subject to scrutiny under section 4958, even if paid after the person becomes a disqualified person. However, the initial contract exception does not apply if the contract is materially modified or if the person fails to substantially perform his or her obligations under the contract. The IRS and the Treasury Department believe that the fact that the initial contract is scrutinized again when either of these situations occurs provides adequate protection to the applicable tax-exempt organization. In addition, the suggested revisions to the regulations under section 501(c)(3) are beyond the scope of this regulations project.

Several comments on specific examples in the initial contract exception section of the temporary regulations were received. One writer commented that in the example involving a hospital management company, the structure of the management fee gives the management company an incentive to provide charity care regardless of whether the hospital has the financial resources to pay for it. The intent of that example is merely to illustrate a fixed payment determined by a fixed formula specified in the contract, where the formula incorporates an amount that is dependent on future specified events, but where no person exercises discretion when calculating the amount of a payment under the contract. Therefore, the example remains unchanged in the final regulations.

Additional comments were received addressing the example in which the same hospital management company also received reimbursements for certain expenses in addition to the fixed management fee. The temporary regulations provide that any amount paid to a person under a reimbursement (or similar) arrangement where discretion is exercised with respect to the amount of expenses incurred or reimbursed is not a *fixed payment* for purposes of the section 4958 initial contract exception. A request was made to distinguish such reimbursement arrangements from payments determined by a fixed formula based on revenues from a particular activity, where a person has discretion over the extent of the activity. The IRS and the Treasury Department believe that reimbursement payments should generally be evaluated for reasonableness for purposes of section 4958. Consequently, the example is not modified in the final regulations, except to clarify that the management fee is a fixed payment, even though the reimbursement payments under the contract are not. However, as discussed below, the IRS and the Treasury Department also believe that reimbursement arrangements that meet the requirements of § 1.62–2(c) (expense reimbursements pursuant to an *accountable plan*) do not raise the same concerns as other reimbursement payments, because of the requirements to qualify as an *accountable plan*. Accordingly, the final regulations disregard amounts reimbursed to employees pursuant to an accountable plan (see the discussion of this topic in this preamble under the heading "Disregarded Economic Benefits"). Because the hospital management company in the example is a contractor, and not an employee, the expense reimbursements do not fall within this exception for expense reimbursements pursuant to an accountable plan.

Disregarded Economic Benefits

The temporary regulations provide that all fringe benefits excluded from income under section 132 (except for certain liability insurance premiums, payments or reimbursements) are disregarded for section 4958 purposes. To provide consistent treatment of benefits provided in cash and in kind, the final regulations also disregard expense reimbursements paid pursuant to an accountable plan that meets the requirements of § 1.62–2(c). Thus, as is the case with section 132(d) working condition fringe benefits, existing standards under section 162 and section 274 will apply to determine whether employee expense reimbursements are disregarded for section 4958 purposes, or are treated as part of the disqualified person's compensation for purposes of determining reasonableness under section 4958.

Several comments were received requesting that lodging furnished for the convenience of the employer (i.e., meeting the requirements of section 119) be disregarded for section 4958 purposes. These comments suggested that benefits excluded from gross income under section 119 should be disregarded for purposes of section 4958 because the policy rationale underlying section 119 is the same as that underlying section 132. However, there are differences between the two sections. In general, section 132 benefits are subject to nondiscrimination rules or are *de minimis* in amount, which is not the case with section 119 benefits. The value of housing benefits is potentially much larger than many of the section 132 benefits, and therefore a greater potential for abuse exists in the section 119 area. Accordingly, the IRS and the Treasury Department believe it is appropriate to treat section 119 benefits differently from section 132 benefits by requiring an evaluation for reasonableness.

The temporary regulations disregard economic benefits provided to a donor solely on account of a contribution deductible under section 170 if two requirements are met. First, any non-disqualified person making a contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit. Second, the disqualified person and a significant number of non-disqualified persons in fact make a contribution of at least the specified amount. Several comments were received requesting additional guidance with respect to these disregarded benefits. One commenter asked that the rule be revised to address contributions that are not deductible by the donor in the current year because of the percentage limitations under section 170(b). That commenter also requested that the final regulations provide for situations where no other donor makes a comparable contribution to the specific applicable tax-exempt organization. In that instance, the commenter requested that the benefits be considered in relation to benefits customarily provided by similar organizations for that level of contribution. Another commenter requested that any benefit provided to a donor be disregarded if the value of the benefit does not exceed the value of the donation and the donor treats the benefit as a *quid pro quo* that reduces the donor's charitable contribution deduction.

The IRS and the Treasury Department decline to address situations where a disqualified person makes a unique contribution to an applicable tax-exempt organization. As a practical matter, an excess benefit transaction would never arise in connection with a contribution to an applicable tax-exempt organization, where the value of the contribution exceeds the value of any benefit the donor receives in return.

However, in response to comments, the final regulations clarify that economic benefits made available on equal terms to a disqualified person and a significant number of other donors who make charitable contributions (within the meaning of section 170) above a specified amount may be disregarded for purposes of section 4958, even if the disqualified person cannot claim a deduction under section 170 with respect to the contribution, because the disqualified person does not itemize deductions, or is subject to the percentage limitations under section 170(b).

Timing of Reasonableness Determination

The temporary regulations provide that reasonableness is determined with respect to any *fixed payment* (as defined for purposes of the initial contract rule) at the time the parties enter into the contract. For non-fixed payments, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. A comment requested that final regulations clarify that the timing for determining the reasonableness of a benefit is not affected by the existence of a substantial risk of forfeiture. In response to this comment, the final regulations are revised to clarify that the general timing rules apply to property subject to a substantial risk of forfeiture. Therefore, if the property subject to a substantial risk of forfeiture satisfies the definition of *fixed payment,* reasonableness is determined at the time the parties enter into the contract providing for the transfer of the property. If the property is not a fixed payment, then reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. An example is also added to illustrate how the regular timing rules for determining reasonableness for section 4958 purposes apply to property that is subject to a substantial risk of forfeiture.

Contemporaneous Substantiation

The temporary regulations provide that an organization must provide written substantiation that is contemporaneous with the transfer of benefits at issue in order to provide clear and convincing evidence of its intent to treat benefits provided to a disqualified person as compensation for services. This requirement may be satisfied by either: (1) The organization reporting the economic benefit as compensation on an original Federal tax information return, or on an amended Federal tax information return filed prior to the commencement of an IRS examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction occurred; or (2) the recipient disqualified person reporting the benefit as income on the person's original Federal tax return, or on the person's amended Federal tax return filed prior to the commencement of an IRS examination. The final regulations clarify that for an amended return filed by a disqualified person to be considered contemporaneous substantiation, the person must file an amended return prior to the earlier of the following dates: (1) Commencement of an IRS examination; or (2) the first documentation in writing by the IRS of a potential excess benefit transaction.

The temporary regulations provide that, if a benefit is not reported on a return filed with the IRS, other written contemporaneous evidence (such as an approved written employment contract executed on or before the date of the transfer) may be used to demonstrate that the appropriate decision-making body or an authorized officer approved a transfer as compensation for services in accordance with established procedures. A comment was received requesting that the reference to "established procedures" be deleted.

The final regulations retain the reference to "established procedures" because it appears in the legislative history to section 4958 (See H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 57). The IRS will interpret the term *established procedures* to refer to the organization's usual practice for approving compensation, not to require an organization to have a formal written procedure for approving compensation. For clarity, the final regulations replace the term *authorized officer* with "officer *authorized to approve compensation'.*

The final regulations also clarify that written evidence upon which the applicable tax-exempt organization based a reasonable belief that a benefit was nontaxable can serve as written contemporaneous evidence demonstrating that a transfer was approved as compensation, even if the organization's belief later proves to be erroneous. The written evidence must have been in existence on or before the due date of the applicable Federal tax return (including extensions but not amendments). The final regulations include an example illustrating this rule.

Finally, the final regulations provide that in no event will an economic benefit that a disqualified person obtains by theft or fraud be treated as consideration for the performance of services.

Transaction in Which the Amount of the Economic Benefit is Determined in Whole or in Part by the Revenues of One or More Activities of the Organization

Section 4958(c)(2) identifies a second type of excess benefit transaction: any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of one or more activities of the applicable tax-exempt organization, where the transaction results in impermissible inurement under section 501(c)(3) or (4). The statute provides, however, that this type of transaction is only an excess benefit transaction to the extent provided in regulations prescribed by the Secretary.

The August 1998 proposed regulations provided standards for determining when a revenue-sharing transaction constitutes an excess benefit transaction. Numerous comments were received on this section of the proposed regulations. Commenters offered multiple, often conflicting, suggestions and recommendations to address the many issues raised with respect to revenue-sharing transactions.

The temporary regulations reserve the section of the regulations governing revenue-sharing transactions. The temporary regulations provide that, until specific rules are issued to regulate such transactions, all transactions with disqualified persons (regardless of whether the person's compensation is computed by reference to revenues of the organization) will be evaluated under general rules defining an *excess benefit transaction* in § 53.4958–4T. A written comment was received supporting the decision to reserve that section of the regulations. However, a speaker at the public hearing objected to the lack of specific limits on revenue-sharing transactions in the temporary regulations. The speaker would allow only a small percentage of a disqualified person's salary to be based on an applicable tax-exempt organization's revenues.

Another comment asked whether revenue-sharing transactions that are reasonable in amount may nonetheless violate the inurement prohibition, so that they jeopardize the organization's tax-exempt status. The temporary regulations and these final regulations make clear that the general exemption standards of sections 501(c)(3) and (4) still apply. Under these standards, inurement may exist even though a disqualified person receives a reasonable amount from a revenue-

sharing arrangement. However, most situations that constitute inurement will also violate the general rules of § 53.4958–4 (*e.g.*, exceed reasonable compensation).

The final regulations continue to reserve the separate section governing revenue-sharing transactions. The IRS and the Treasury Department will continue to monitor these types of transactions, and if appropriate, will consider issuing specific rules to regulate them. Any later regulations that may become necessary will be issued in proposed form.

The final regulations provide that the general rules of § 53.4958–4 apply to all transactions with disqualified persons, regardless of whether the amount of the benefit provided is determined, in whole or in part, by the revenues of one or more activities of the organization.

Rebuttable Presumption That a Transaction Is Not an Excess Benefit Transaction

An informal question was presented with respect to the definition of *authorized body* contained in the temporary regulations for purposes of the rebuttable presumption of reasonableness. The IRS was asked whether approval by one authorized official of an applicable tax-exempt organization could satisfy the requirement of approval by an *authorized body* for purposes of establishing the presumption. Under the regulatory definition of *authorized body* in both the temporary regulations and these final regulations, a single individual may constitute either a committee of the governing body or a party authorized by the governing body to act on its behalf, if State law allows a single individual to act in either of these capacities.

Correction

Several comments were received with respect to the specific correction rules contained in the temporary regulations. One commenter requested that, in the case of an excess benefit involving a transfer of property by an applicable tax-exempt organization to a disqualified person, the final regulations be modified to require the return of the specific property if the organization wants the property back. The commenter suggested that such a rule would be consistent with the private foundation self-dealing regulations under section 4941, which require rescission of the transaction where possible. Rescission is appropriate under section 4941, where most transactions between a private foundation and a disqualified person are absolutely prohibited. By contrast, section 4958 is intended to ensure that transactions between an applicable tax-exempt organization and a disqualified person, which are permissible, do not result in an excess benefit to the disqualified person. Therefore, no change has been made in the final regulations on this point.

Another commenter requested additional guidance on the rules governing correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt. The temporary regulations provide that, in such cases, the correction amount may not be paid to an organization that is related to the disqualified person. The commenter noted that the "related to" standard is imprecise. The commenter suggested replacing this standard with a requirement that the recipient organization in these instances either be a publicly-supported charity with respect to which the disqualified person has no authority to make or recommend grants, or an organization selected with the consent of the appropriate State official.

In response to this comment, the final regulations require that a section 501(c)(3) organization receiving the correction amount be a publicly-supported charity that has been in existence as such for a continuous period of at least 60 calendar months ending on the correction date. The time in existence requirement prevents the disqualified person from creating a new organization to receive the correction amount. The final regulations also require that the organization receiving the correction amount does not allow the disqualified person to make or recommend any grants or distributions by the organization. The final regulations replace the relatedness standard with a requirement that the disqualified person is not also a disqualified person with respect to the organization receiving the correction amount. Similar requirements, except for the publicly-supported charity requirement, apply to a section 501(c)(4) organization receiving the correction amount.

Factors To Determine Whether Revocation Is Appropriate

The preamble of the August 1998 proposed regulations listed four factors that the IRS will consider in determining whether to revoke an applicable tax-exempt organization's exempt status: (1) Whether the organization has been involved in repeated excess benefit transactions; (2) the size and scope of the excess benefit transaction; (3) whether, after concluding that it has been party to an excess benefit transaction, the organization has implemented safeguards to prevent future recurrences; and (4) whether there was compliance with other applicable laws. The preamble of the temporary regulations indicates that the IRS will publish guidance regarding the factors that it will consider in enforcing the requirements of sections 4958, 501(c)(3), and 501(c)(4), as it gains more experience in administering section 4958. One comment was received recommending several factors in addition to the four factors. The IRS continues to consider the suggested additions and revisions. Until it publishes a revised or expanded list of factors, the IRS will consider all relevant facts and circumstances in the administration of section 4958 cases.

Other Substantiation Requirements

The final regulations add a special rule clarifying that compliance with the specific substantiation rules of the regulations does not relieve applicable tax-exempt organizations of other rules and requirements of the Code, regulations, Revenue Rulings, and other guidance issued by the IRS (such as the substantiation rules of sections 162 and 274, or § 1.6001–1(a) and (c)).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. A final regulatory flexibility analysis has been prepared for a collection of information in this Treasury decision under 5 U.S.C. 604.

Final Regulatory Flexibility Analysis

These final regulations clarifying section 4958 of the Code (Taxes on excess benefit transactions) may have an impact on small organizations if those organizations avail themselves of the rebuttable presumption of reasonableness described in the regulations (26 CFR 53.4958–6(a)(2), 53.4958–6(a)(3), 53.4958–6(c)(2), and 53.4958–6(c)(3)). The rebuttable presumption is available because the legislative history of section 4958 (H. REP. 104–506 at 56–7, March 28, 1996) stated that parties to a transaction should be entitled to rely on such a rebuttable presumption that a compensation arrangement or a property transaction between certain organizations and disqualified persons of the organizations is reasonable or at fair market value. The legislative history

further instructed the Secretary of the Treasury and the IRS to issue guidance in connection with the standard for establishing reasonable compensation or fair market value that incorporates this presumption.

The objective for the rebuttable presumption is to allow organizations that satisfy the three requirements to presume that compensation arrangements and property transactions entered into with disqualified persons pursuant to satisfaction of those requirements are reasonable or at fair market value. In such cases, the section 4958 excise taxes can be imposed only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction. The legal basis for the proposed rule is Code sections 4958 and 7805.

The final rule affects organizations described in Code sections 501(c)(3) and (4) (applicable tax-exempt organizations). Some applicable tax-exempt organizations may be small organizations, defined in 5 U.S.C. 601(4) as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed recordkeeping burden entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value. These actions are necessary to meet two of the requirements specified in the legislative history for obtaining the rebuttable presumption of reasonableness. The skills necessary for these actions are of the type required for obtaining and considering comparability data, and for documenting the membership and actions of the governing board or relevant committee of the organization. Applicable tax-exempt organizations that are small entities of the class that files Form 990-EZ, "Short Form Return of Organization Exempt From Income Tax" (i.e., those with gross receipts of less than $100,000 and assets of less than $250,000), are unlikely to undertake fulfilling the requirements of the rebuttable presumption of reasonableness, and therefore will not be affected by the recordkeeping burden. All other classes of applicable tax-exempt organizations that file Form 990, "Return of Organization Exempt from Income Tax", up to organizations with assets of $50 million, are likely to be small organizations that avail themselves of the rebuttable presumption of reasonableness. These classes range from organizations with assets of $100,000 to $50 million. The final rule contains a less burdensome safe harbor for one of the requirements (obtaining comparability data on compensation) for organizations with annual gross receipts of less than $1 million. The IRS is not aware of any other relevant Federal rules which may duplicate, overlap, or conflict with the final rule. A less burdensome alternative for small organizations would be to exempt those entities from the requirements for establishing the rebuttable presumption of reasonableness. However, it is not consistent with the statute to allow organizations to rely on this presumption without satisfying some conditions. Satisfaction of the requirements as outlined in the legislative history leads to a benefit, but failure to satisfy them does not necessarily lead to a penalty. A more burdensome alternative would be to require all applicable tax-exempt organizations under Code section 4958 to satisfy the three requirements of the rebuttable presumption of reasonableness under all circumstances.

Pursuant to section 7805(f) of the Code, this final regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Drafting Information

The principal author of these regulations is Phyllis D. Haney, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements, Trusts and trustees.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 53, 301, and 602 are amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

1a. Sections 53.4958–0T through 53.4958–8T are removed.

2. Sections 53.4958–0 through 53.4958–8 are added to read as follows:

§ 53.4958–0 Table of contents.

This section lists the major captions contained in §§ 53.4958–1 through 53.4958–8.

Section 53.4958–1 Taxes on Excess Benefit Transactions

(a) In general.
(b) Excess benefit defined.
(c) Taxes paid by disqualified person.
(1) Initial tax.
(2) Additional tax on disqualified person.
(i) In general.
(ii) Taxable period.
(iii) Abatement if correction during the correction period.
(d) Tax paid by organization managers.
(1) In general.
(2) Organization manager defined.
(i) In general.
(ii) Special rule for certain committee members.
(3) Participation.
(4) Knowing.
(i) In general.
(ii) Amplification of general rule.
(iii) Reliance on professional advice.
(iv) Satisfaction of rebuttable presumption of reasonableness.
(5) Willful.
(6) Due to reasonable cause.
(7) Limits on liability for management.
(8) Joint and several liability.
(9) Burden of proof.
(e) Date of occurrence.
(1) In general.
(2) Special rules.
(3) Statute of limitations rules.
(f) Effective date for imposition of taxes.
(1) In general.
(2) Existing binding contracts.

Section 53.4958–2 Definition of Applicable Tax-Exempt Organization

(a) Organizations described in section 501(c)(3) or (4) and exempt from tax under section 501(a).
(1) In general.
(2) Exceptions from definition of applicable tax-exempt organization.
(i) Private foundation.
(ii) Governmental unit or affiliate.
(3) Organizations described in section 501(c)(3).
(4) Organizations described in section 501(c)(4).
(5) Effect of non-recognition or revocation of exempt status.
(b) Special rules.
(1) Transition rule for lookback period.
(2) Certain foreign organizations.

§ 53.4958–1 Taxes on excess benefit transactions.

(a) *In general.* Section 4958 imposes excise taxes on each excess benefit transaction (as defined in section 4958(c) and § 53.4958–4) between an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958–2) and a disqualified person (as defined in section 4958(f)(1) and § 53.4958–3). A disqualified person who receives an excess benefit from an excess benefit transaction is liable for payment of a section 4958(a)(1) excise tax equal to 25 percent of the excess benefit. If an initial tax is imposed by section 4958(a)(1) on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section), then any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed is liable for an additional tax of 200 percent of the excess benefit. An organization manager (as defined in section 4958(f)(2) and paragraph (d) of this section) who participates in an excess benefit transaction, knowing that it was such a transaction, is liable for payment of a section 4958(a)(2) excise tax equal to 10 percent of the excess benefit, unless the participation was not willful and was due to reasonable cause. If an organization manager also receives an excess benefit from an excess benefit transaction, the manager may be liable for both taxes imposed by section 4958(a).

(b) *Excess benefit defined.* An excess benefit is the amount by which the value of the economic benefit provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person exceeds the value of the consideration

(including the performance of services) received for providing such benefit.

(c) *Taxes paid by disqualified person*—(1) *Initial tax.* Section 4958(a)(1) imposes a tax equal to 25 percent of the excess benefit on each excess benefit transaction. The section 4958(a)(1) tax shall be paid by any disqualified person who received an excess benefit from that excess benefit transaction. With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(a)(1), all such persons are jointly and severally liable for that tax.

(2) *Additional tax on disqualified person*—(i) *In general.* Section 4958(b) imposes a tax equal to 200 percent of the excess benefit in any case in which section 4958(a)(1) imposes a 25-percent tax on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section). If a disqualified person makes a payment of less than the full correction amount under the rules of § 53.4958–7, the 200-percent tax is imposed only on the unpaid portion of the correction amount (as described in § 53.4958–7(c)). The tax imposed by section 4958(b) is payable by any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed by section 4958(a)(1). With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(b), all such persons are jointly and severally liable for that tax.

(ii) *Taxable period. Taxable period* means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earlier of—

(A) The date of mailing a notice of deficiency under section 6212 with respect to the section 4958(a)(1) tax; or

(B) The date on which the tax imposed by section 4958(a)(1) is assessed.

(iii) *Abatement if correction during the correction period.* For rules relating to abatement of taxes on excess benefit transactions that are corrected within the correction period, as defined in section 4963(e), see sections 4961(a), 4962(a), and the regulations thereunder. The abatement rules of section 4961 specifically provide for a 90-day correction period after the date of mailing a notice of deficiency under section 6212 with respect to the section 4958(b) 200-percent tax. If the excess benefit is corrected during that correction period, the 200-percent tax imposed shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. For special rules relating to abatement of the 25-percent tax, see section 4962.

(d) *Tax paid by organization managers*—(1) *In general.* In any case in which section 4958(a)(1) imposes a tax, section 4958(a)(2) imposes a tax equal to 10 percent of the excess benefit on the participation of any organization manager who knowingly participated in the excess benefit transaction, unless such participation was not willful and was due to reasonable cause. Any organization manager who so participated in the excess benefit transaction must pay the tax.

(2) *Organization manager defined*—(i) *In general.* An organization manager is, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization, or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization, regardless of title. A person is an officer of an organization if that person—

(A) Is specifically so designated under the certificate of incorporation, by-laws, or other constitutive documents of the organization; or

(B) Regularly exercises general authority to make administrative or policy decisions on behalf of the organization. A contractor who acts solely in a capacity as an attorney, accountant, or investment manager or advisor, is not an officer. For purposes of this paragraph (d)(2)(i)(B), any person who has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior, is not an officer.

(ii) *Special rule for certain committee members.* An individual who is not an officer, director, or trustee, yet serves on a committee of the governing body of an applicable tax-exempt organization (or as a designee of the governing body described in § 53.4958–6(c)(1)) that is attempting to invoke the rebuttable presumption of reasonableness described in § 53.4958–6 based on the committee's (or designee's) actions, is an organization manager for purposes of the tax imposed by section 4958(a)(2).

(3) *Participation.* For purposes of section 4958(a)(2) and this paragraph (d), participation includes silence or inaction on the part of an organization manager where the manager is under a duty to speak or act, as well as any affirmative action by such manager. An organization manager is not considered to have participated in an excess benefit transaction, however, where the manager has opposed the transaction in a manner consistent with the fulfillment of the manager's responsibilities to the applicable tax-exempt organization.

(4) *Knowing*—(i) *In general.* For purposes of section 4958(a)(2) and this paragraph (d), a manager participates in a transaction knowingly only if the person—

(A) Has actual knowledge of sufficient facts so that, based solely upon those facts, such transaction would be an excess benefit transaction;

(B) Is aware that such a transaction under these circumstances may violate the provisions of Federal tax law governing excess benefit transactions; and

(C) Negligently fails to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction, or the manager is in fact aware that it is such a transaction.

(ii) *Amplification of general rule. Knowing* does not mean having reason to know. However, evidence tending to show that a manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of such a fact or rule. Thus, for example, evidence tending to show that a manager has reason to know of sufficient facts so that, based solely upon such facts, a transaction would be an excess benefit transaction is relevant in determining whether the manager has actual knowledge of such facts.

(iii) *Reliance on professional advice.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For purposes of section 4958(a)(2) and this paragraph (d), a written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion. The absence of a written opinion of an appropriate professional with respect to a transaction shall not, by itself, however, give rise to any inference that an organization manager participated in the transaction

knowingly. For purposes of this paragraph, appropriate professionals on whose written opinion an organization manager may rely, are limited to—

(A) Legal counsel, including in-house counsel;

(B) Certified public accountants or accounting firms with expertise regarding the relevant tax law matters; and

(C) Independent valuation experts who—

(*1*) Hold themselves out to the public as appraisers or compensation consultants;

(*2*) Perform the relevant valuations on a regular basis;

(*3*) Are qualified to make valuations of the type of property or services involved; and

(*4*) Include in the written opinion a certification that the requirements of paragraphs (d)(4)(iii)(C)(*1*) through (*3*) of this section are met.

(iv) *Satisfaction of rebuttable presumption of reasonableness.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, if the appropriate authorized body has met the requirements of § 53.4958–6(a) with respect to the transaction.

(5) *Willful.* For purposes of section 4958(a)(2) and this paragraph (d), participation by an organization manager is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make the participation willful. However, participation by an organization manager is not willful if the manager does not know that the transaction in which the manager is participating is an excess benefit transaction.

(6) *Due to reasonable cause.* An organization manager's participation is due to reasonable cause if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Limits on liability for management.* The maximum aggregate amount of tax collectible under section 4958(a)(2) and this paragraph (d) from organization managers with respect to any one excess benefit transaction is $10,000.

(8) *Joint and several liability.* In any case where more than one person is liable for a tax imposed by section 4958(a)(2), all such persons shall be jointly and severally liable for the taxes imposed under section 4958(a)(2) with respect to that excess benefit transaction.

(9) *Burden of proof.* For provisions relating to the burden of proof in cases involving the issue of whether an organization manager has knowingly participated in an excess benefit transaction, see section 7454(b) and § 301.7454–2 of this chapter. In these cases, the Commissioner bears the burden of proof.

(e) *Date of occurrence*—(1) *In general.* Except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for Federal income tax purposes. When a single contractual arrangement provides for a series of compensation or other payments to (or for the use of) a disqualified person over the course of the disqualified person's taxable year (or part of a taxable year), any excess benefit transaction with respect to these aggregate payments is deemed to occur on the last day of the taxable year (or if the payments continue for part of the year, the date of the last payment in the series).

(2) *Special rules.* In the case of benefits provided pursuant to a qualified pension, profit-sharing, or stock bonus plan, the transaction occurs on the date the benefit is vested. In the case of a transfer of property that is subject to a substantial risk of forfeiture or in the case of rights to future compensation or property (including benefits under a nonqualified deferred compensation plan), the transaction occurs on the date the property, or the rights to future compensation or property, is not subject to a substantial risk of forfeiture. However, where the disqualified person elects to include an amount in gross income in the taxable year of transfer pursuant to section 83(b), the general rule of paragraph (e)(1) of this section applies to the property with respect to which the section 83(b) election is made. Any excess benefit transaction with respect to benefits under a deferred compensation plan which vest during any taxable year of the disqualified person is deemed to occur on the last day of such taxable year. For the rules governing the timing of the reasonableness determination for deferred, contingent, and certain other noncash compensation, see § 53.4958–4(b)(2).

(3) *Statute of limitations rules.* See sections 6501(e)(3) and (l) and the regulations thereunder for statute of limitations rules as they apply to section 4958 excise taxes.

(f) *Effective date for imposition of taxes*—(1) *In general.* The section 4958 taxes imposed on excess benefit transactions or on participation in excess benefit transactions apply to transactions occurring on or after September 14, 1995.

(2) *Existing binding contracts.* The section 4958 taxes do not apply to any transaction occurring pursuant to a written contract that was binding on September 13, 1995, and at all times thereafter before the transaction occurs. A written binding contract that is terminable or subject to cancellation by the applicable tax-exempt organization without the disqualified person's consent (including as the result of a breach of contract by the disqualified person) and without substantial penalty to the organization, is no longer treated as a binding contract as of the earliest date that any such termination or cancellation, if made, would be effective. If a binding written contract is materially changed, it is treated as a new contract entered into as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any payment under the contract.

§ 53.4958–2 Definition of applicable tax-exempt organization.

(a) *Organizations described in section 501(c)(3) or (4) and exempt from tax under section 501(a)*—(1) *In general.* An applicable tax-exempt organization is any organization that, without regard to any excess benefit, would be described in section 501(c)(3) or (4) and exempt from tax under section 501(a). An applicable tax-exempt organization also includes any organization that was described in section 501(c)(3) or (4) and was exempt from tax under section 501(a) at any time during a five-year period ending on the date of an excess benefit transaction (the lookback period).

(2) *Exceptions from definition of applicable tax-exempt organization*—(i) *Private foundation.* A private foundation as defined in section 509(a) is not an applicable tax-exempt organization for section 4958 purposes.

(ii) *Governmental unit or affiliate.* A governmental unit or an affiliate of a governmental unit is not an applicable tax-exempt organization for section 4958 purposes if it is—

(A) Exempt from (or not subject to) taxation without regard to section 501(a); or

(B) Relieved from filing an annual return pursuant to the authority of § 1.6033–2(g)(6).

(3) *Organizations described in section 501(c)(3).* An organization is described in section 501(c)(3) for purposes of section 4958 only if the organization—

(i) Provides the notice described in section 508; or

(ii) Is described in section 501(c)(3) and specifically is excluded from the requirements of section 508 by that section.

(4) *Organizations described in section 501(c)(4).* An organization is described in section 501(c)(4) for purposes of section 4958 only if the organization—

(i) Has applied for and received recognition from the Internal Revenue Service as an organization described in section 501(c)(4); or

(ii) Has filed an application for recognition under section 501(c)(4) with the Internal Revenue Service, has filed an annual information return as a section 501(c)(4) organization under the Internal Revenue Code or regulations promulgated thereunder, or has otherwise held itself out as being described in section 501(c)(4) and exempt from tax under section 501(a).

(5) *Effect of non-recognition or revocation of exempt status.* An organization is not described in paragraph (a)(3) or (4) of this section during any period covered by a final determination or adjudication that the organization is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) or (4), so long as that determination or adjudication is not based upon participation in inurement or one or more excess benefit transactions. However, the organization may be an applicable tax-exempt organization for that period as a result of the five-year lookback period described in paragraph (a)(1) of this section.

(b) *Special rules*—(1) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(2) *Certain foreign organizations.* A foreign organization, recognized by the Internal Revenue Service or by treaty, that receives substantially all of its support (other than gross investment income) from sources outside of the United States is not an organization described in section 501(c)(3) or (4) for purposes of section 4958.

§ 53.4958–3 Definition of disqualified person.

(a) *In general*—(1) *Scope of definition.* Section 4958(f)(1) defines *disqualified person*, with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction (the lookback period). Paragraph (b) of this section describes persons who are defined to be disqualified persons under the statute, including certain family members of an individual in a position to exercise substantial influence, and certain 35-percent controlled entities. Paragraph (c) of this section describes persons in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization by virtue of their powers and responsibilities or certain interests they hold. Paragraph (d) of this section describes persons deemed not to be in a position to exercise substantial influence. Whether any person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person with respect to a transaction for purposes of section 4958 is based on all relevant facts and circumstances, as described in paragraph (e) of this section. Paragraph (f) of this section describes special rules for affiliated organizations. Examples in paragraph (g) of this section illustrate these categories of persons.

(2) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(b) *Statutory categories of disqualified persons*—(1) *Family members.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a disqualified person described in paragraph (a) of this section (other than as a result of this paragraph) with respect to any transaction with the same organization. For purposes of the following sentence, a legally adopted child of an individual is treated as a child of such individual by blood. A person's family is limited to—

(i) Spouse;

(ii) Brothers or sisters (by whole or half blood);

(iii) Spouses of brothers or sisters (by whole or half blood);

(iv) Ancestors;

(v) Children;

(vi) Grandchildren;

(vii) Great grandchildren; and

(viii) Spouses of children, grandchildren, and great grandchildren.

(2) *Thirty-five percent controlled entities*—(i) *In general.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a 35-percent controlled entity. A 35-percent controlled entity is—

(A) A corporation in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the combined voting power;

(B) A partnership in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the profits interest; or

(C) A trust or estate in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the beneficial interest.

(ii) *Combined voting power.* For purposes of this paragraph (b)(2), combined voting power includes voting power represented by holdings of voting stock, direct or indirect, but does not include voting rights held only as a director, trustee, or other fiduciary.

(iii) *Constructive ownership rules*—(A) *Stockholdings.* For purposes of section 4958(f)(3) and this paragraph (b)(2), indirect stockholdings are taken into account as under section 267(c), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(B) *Profits or beneficial interest.* For purposes of section 4958(f)(3) and this paragraph (b)(2), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than section 267(c)(3)), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(c) *Persons having substantial influence.* A person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization:

(1) *Voting members of the governing body.* This category includes any individual serving on the governing body of the organization who is entitled to vote on any matter over which the governing body has authority.

(2) *Presidents, chief executive officers, or chief operating officers.* This category includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or

operation of the organization. A person who serves as president, chief executive officer, or chief operating officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals (e.g., co-presidents), who may exercise such responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(3) *Treasurers and chief financial officers.* This category includes any person who, regardless of title, has ultimate responsibility for managing the finances of the organization. A person who serves as treasurer or chief financial officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals who may exercise the responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(4) *Persons with a material financial interest in a provider-sponsored organization.* For purposes of section 4958, if a hospital that participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act, 42 U.S.C. 1395w–25) is an applicable tax-exempt organization, then any person with a material financial interest (within the meaning of section 501(o)) in the provider-sponsored organization has substantial influence with respect to the hospital.

(d) *Persons deemed not to have substantial influence.* A person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if that person is described in one of the following categories:

(1) *Tax-exempt organizations described in section 501(c)(3).* This category includes any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(2) *Certain section 501(c)(4) organizations.* Only with respect to an applicable tax-exempt organization described in section 501(c)(4) and § 53.4958–2(a)(4), this category includes any other organization so described.

(3) *Employees receiving economic benefits of less than a specified amount in a taxable year.* This category includes, for the taxable year in which benefits are provided, any full- or part-time employee of the applicable tax-exempt organization who—

(i) Receives economic benefits, directly or indirectly from the organization, of less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i);

(ii) Is not described in paragraph (b) or (c) of this section with respect to the organization; and

(iii) Is not a substantial contributor to the organization within the meaning of section 507(d)(2)(A), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years.

(e) *Facts and circumstances govern in all other cases*—(1) *In general.* Whether a person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person depends upon all relevant facts and circumstances.

(2) *Facts and circumstances tending to show substantial influence.* Facts and circumstances tending to show that a person has substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person founded the organization;

(ii) The person is a substantial contributor to the organization (within the meaning of section 507(d)(2)(A)), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years;

(iii) The person's compensation is primarily based on revenues derived from activities of the organization, or of a particular department or function of the organization, that the person controls;

(iv) The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;

(v) The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole;

(vi) The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person; or

(vii) The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

(3) *Facts and circumstances tending to show no substantial influence.* Facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person has taken a bona fide vow of poverty as an employee, agent, or on behalf, of a religious organization;

(ii) The person is a contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered);

(iii) The direct supervisor of the individual is not a disqualified person;

(iv) The person does not participate in any management decisions affecting the organization as a whole or a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

(v) Any preferential treatment a person receives based on the size of that person's contribution is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

(f) *Affiliated organizations.* In the case of multiple organizations affiliated by common control or governing documents, the determination of whether a person does or does not have substantial influence shall be made separately for each applicable tax-exempt organization. A person may be a disqualified person with respect to transactions with more than one applicable tax-exempt organization.

(g) *Examples.* The following examples illustrate the principles of this section. A finding that a person is a disqualified person in the following examples does not indicate that an excess benefit transaction has occurred. If a person is a disqualified person, the rules of section 4958(c) and § 53.4958–4 apply to determine whether an excess benefit transaction has occurred. The examples are as follows:

Example 1. N, an artist by profession, works part-time at R, a local museum. In the first taxable year in which R employs N, R pays N a salary and provides no additional benefits to N except for free admission to the museum, a benefit R provides to all of its employees and volunteers. The total economic benefits N receives from R during the taxable year are less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i). The part-time job constitutes N's only relationship with R. N is not related to any other disqualified person with respect to R. N is deemed not to be in a position to exercise substantial influence over the affairs of R. Therefore, N is not a disqualified person with respect to R in that year.

Example 2. The facts are the same as in *Example 1*, except that in addition to the

salary that R pays N for N's services during the taxable year, R also purchases one of N's paintings for $x. The total of N's salary plus $x exceeds the amount referenced for highly compensated employees in section 414(q)(1)(B)(i). Consequently, whether N is in a position to exercise substantial influence over the affairs of R for that taxable year depends upon all of the relevant facts and circumstances.

Example 3. Q is a member of K, a section 501(c)(3) organization with a broad-based public membership. Members of K are entitled to vote only with respect to the annual election of directors and the approval of major organizational transactions such as a merger or dissolution. Q is not related to any other disqualified person of K. Q has no other relationship to K besides being a member of K and occasionally making modest donations to K. Whether Q is a disqualified person is determined by all relevant facts and circumstances. Q's voting rights, which are the same as granted to all members of K, do not place Q in a position to exercise substantial influence over K. Under these facts and circumstances, Q is not a disqualified person with respect to K.

Example 4. E is the headmaster of Z, a school that is an applicable tax-exempt organization for purposes of section 4958. E reports to Z's board of trustees and has ultimate responsibility for supervising Z's day-to-day operations. For example, E can hire faculty members and staff, make changes to the school's curriculum and discipline students without specific board approval. Because E has ultimate responsibility for supervising the operation of Z, E is in a position to exercise substantial influence over the affairs of Z. Therefore, E is a disqualified person with respect to Z.

Example 5. Y is an applicable tax-exempt organization for purposes of section 4958 that decides to use bingo games as a method of generating revenue. Y enters into a contract with B, a company that operates bingo games. Under the contract, B manages the promotion and operation of the bingo activity, provides all necessary staff, equipment, and services, and pays Y *q* percent of the revenue from this activity. B retains the balance of the proceeds. Y provides no goods or services in connection with the bingo operation other than the use of its hall for the bingo games. The annual gross revenue earned from the bingo games represents more than half of Y's total annual revenue. B's compensation is primarily based on revenues from an activity B controls. B also manages a discrete activity of Y that represents a substantial portion of Y's income compared to the organization as a whole. Under these facts and circumstances, B is in a position to exercise substantial influence over the affairs of Y. Therefore, B is a disqualified person with respect to Y.

Example 6. The facts are the same as in *Example 5*, with the additional fact that P owns a majority of the stock of B and is actively involved in managing B. Because P owns a controlling interest (measured by either vote or value) in and actively manages B, P is also in a position to exercise substantial influence over the affairs of Y. Therefore, under these facts and circumstances, P is a disqualified person with respect to Y.

Example 7. A, an applicable tax-exempt organization for purposes of section 4958, owns and operates one acute care hospital. B, a for-profit corporation, owns and operates a number of hospitals. A and B form C, a limited liability company. In exchange for proportional ownership interests, A contributes its hospital, and B contributes other assets, to C. All of A's assets then consist of its membership interest in C. A continues to be operated for exempt purposes based almost exclusively on the activities it conducts through C. C enters into a management agreement with a management company, M, to provide day to day management services to C. Subject to supervision by C's board, M is given broad discretion to manage C's day to day operation and has ultimate responsibility for supervising the management of the hospital. Because M has ultimate responsibility for supervising the management of the hospital operated by C, A's ownership interest in C is its primary asset, and C's activities form the basis for A's continued exemption as an organization described in section 501(c)(3), M is in a position to exercise substantial influence over the affairs of A. Therefore, M is a disqualified person with respect to A.

Example 8. T is a large university and an applicable tax-exempt organization for purposes of section 4958. L is the dean of the College of Law of T, a substantial source of revenue for T, including contributions from alumni and foundations. L is not related to any other disqualified person of T. L does not serve on T's governing body or have ultimate responsibility for managing the university as whole. However, as dean of the College of Law, L plays a key role in faculty hiring and determines a substantial portion of the capital expenditures and operating budget of the College of Law. L's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. L's management of a discrete segment of T that represents a substantial portion of the income of T (as compared to T as a whole) places L in a position to exercise substantial influence over the affairs of T. Under these facts and circumstances L is a disqualified person with respect to T.

Example 9. S chairs a small academic department in the College of Arts and Sciences of the same university T described in *Example 8*. S is not related to any other disqualified person of T. S does not serve on T's governing body or as an officer of T. As department chair, S supervises faculty in the department, approves the course curriculum, and oversees the operating budget for the department. S's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. Even though S manages the department, that department does not represent a substantial portion of T's activities, assets, income, expenses, or operating budget. Therefore, S does not participate in any management decisions affecting either T as a whole, or a discrete segment or activity of T that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, S does not have substantial influence over the affairs of T, and therefore S is not a disqualified person with respect to T.

Example 10. U is a large acute-care hospital that is an applicable tax-exempt organization for purposes of section 4958. U employs X as a radiologist. X gives instructions to staff with respect to the radiology work X conducts, but X does not supervise other U employees or manage any substantial part of U's operations. X's compensation is primarily in the form of a fixed salary. In addition, X is eligible to receive an incentive award based on revenues of the radiology department. X's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. X is not related to any other disqualified person of U. X does not serve on U's governing body or as an officer of U. Although U participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act), X does not have a material financial interest in that organization. X does not receive compensation primarily based on revenues derived from activities of U that X controls. X does not participate in any management decisions affecting either U as a whole or a discrete segment of U that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, X does not have substantial influence over the affairs of U, and therefore X is not a disqualified person with respect to U.

Example 11. W is a cardiologist and head of the cardiology department of the same hospital U described in *Example 10*. The cardiology department is a major source of patients admitted to U and consequently represents a substantial portion of U's income, as compared to U as a whole. W does not serve on U's governing board or as an officer of U. W does not have a material financial interest in the provider-sponsored organization (as defined in section 1855(e) of the Social Security Act) in which U participates. W receives a salary and retirement and welfare benefits fixed by a three-year renewable employment contract with U. W's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. As department head, W manages the cardiology department and has authority to allocate the budget for that department, which includes authority to distribute incentive bonuses among cardiologists according to criteria that W has authority to set. W's management of a discrete segment of U that represents a substantial portion of its income and activities (as compared to U as a whole) places W in a position to exercise substantial influence over the affairs of U. Under these facts and circumstances, W is a disqualified person with respect to U.

Example 12. M is a museum that is an applicable tax-exempt organization for purposes of section 4958. D provides accounting services and tax advice to M as

a contractor in return for a fee. D has no other relationship with M and is not related to any disqualified person of M. D does not provide professional advice with respect to any transaction from which D might economically benefit either directly or indirectly (aside from fees received for the professional advice rendered). Because D's sole relationship to M is providing professional advice (without having decision-making authority) with respect to transactions from which D will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered), under these facts and circumstances, D is not a disqualified person with respect to M.

Example 13. F is a repertory theater company that is an applicable tax-exempt organization for purposes of section 4958. F holds a fund-raising campaign to pay for the construction of a new theater. J is a regular subscriber to F's productions who has made modest gifts to F in the past. J has no relationship to F other than as a subscriber and contributor. F solicits contributions as part of a broad public campaign intended to attract a large number of donors, including a substantial number of donors making large gifts. In its solicitations for contributions, F promises to invite all contributors giving $z or more to a special opening production and party held at the new theater. These contributors are also given a special number to call in F's office to reserve tickets for performances, make ticket exchanges, and make other special arrangements for their convenience. J makes a contribution of $z to F, which makes J a substantial contributor within the meaning of section 507(d)(2)(A), taking into account only contributions received by F during its current and the four preceding taxable years. J receives the benefits described in F's solicitation. Because F offers the same benefit to all donors of $z or more, the preferential treatment that J receives does not indicate that J is in a position to exercise substantial influence over the affairs of the organization. Therefore, under these facts and circumstances, J is not a disqualified person with respect to F.

§ 53.4958–4 Excess benefit transaction.

(a) *Definition of excess benefit transaction*—(1) *In general.* An *excess benefit transaction* means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person, and the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. Subject to the limitations of paragraph (c) of this section (relating to the treatment of economic benefits as compensation for the performance of services), to determine whether an excess benefit transaction has occurred, all consideration and benefits (except disregarded benefits described in paragraph (a)(4) of this section) exchanged between a disqualified person and the applicable tax-exempt organization and all entities the organization controls (within the meaning of paragraph (a)(2)(ii)(B) of this section) are taken into account. For example, in determining the reasonableness of compensation that is paid (or vests, or is no longer subject to a substantial risk of forfeiture) in one year, services performed in prior years may be taken into account. The rules of this section apply to all transactions with disqualified persons, regardless of whether the amount of the benefit provided is determined, in whole or in part, by the revenues of one or more activities of the organization. For rules regarding valuation standards, see paragraph (b) of this section. For the requirement that an applicable tax-exempt organization clearly indicate its intent to treat a benefit as compensation for services when paid, see paragraph (c) of this section.

(2) *Economic benefit provided indirectly*—(i) *In general.* A transaction that would be an excess benefit transaction if the applicable tax-exempt organization engaged in it directly with a disqualified person is likewise an excess benefit transaction when it is accomplished indirectly. An applicable tax-exempt organization may provide an excess benefit indirectly to a disqualified person through a controlled entity or through an intermediary, as described in paragraphs (a)(2)(ii) and (iii) of this section, respectively.

(ii) *Through a controlled entity*—(A) *In general.* An applicable tax-exempt organization may provide an excess benefit indirectly through the use of one or more entities it controls. For purposes of section 4958, economic benefits provided by a controlled entity will be treated as provided by the applicable tax-exempt organization.

(B) *Definition of control*— (*1*) *In general.* For purposes of this paragraph, *control* by an applicable tax-exempt organization means—

(*i*) In the case of a stock corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation;

(*ii*) In the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in the partnership;

(*iii*) In the case of a nonstock organization (i.e., an entity in which no person holds a proprietary interest), that at least 50 percent of the directors or trustees of the organization are either representatives (including trustees, directors, agents, or employees) of, or directly or indirectly controlled by, an applicable tax-exempt organization; or

(*iv*) In the case of any other entity, ownership of more than 50 percent of the beneficial interest in the entity.

(*2*) *Constructive ownership.* Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(iii) *Through an intermediary.* An applicable tax-exempt organization may provide an excess benefit indirectly through an intermediary. An intermediary is any person (including an individual or a taxable or tax-exempt entity) who participates in a transaction with one or more disqualified persons of an applicable tax-exempt organization. For purposes of section 4958, economic benefits provided by an intermediary will be treated as provided by the applicable tax-exempt organization when—

(A) An applicable tax-exempt organization provides an economic benefit to an intermediary; and

(B) In connection with the receipt of the benefit by the intermediary—

(*1*) There is evidence of an oral or written agreement or understanding that the intermediary will provide economic benefits to or for the use of a disqualified person; or

(*2*) The intermediary provides economic benefits to or for the use of a disqualified person without a significant business purpose or exempt purpose of its own.

(iv) *Examples.* The following examples illustrate when economic benefits are provided indirectly under the rules of this paragraph (a)(2):

Example 1. K is an applicable tax-exempt organization for purposes of section 4958. L is a wholly-owned taxable subsidiary of K. J is employed by K, and is a disqualified person with respect to K. K pays J an annual salary of $*12m*, and reports that amount as compensation during calendar year 2001. Although J only performed services for K for nine months of 2001. J performed equivalent services for L during the remaining three months of 2001. Taking into account all of the economic benefits K provided to J, and all of the services J performed for K and L, $*12m* does not exceed the fair market value of the services J performed for K and L during 2001. Therefore, under these facts, K does not provide an excess benefit to J directly or indirectly.

Example 2. F is an applicable tax-exempt organization for purposes of section 4958. D is an entity controlled by F within the meaning of paragraph (a)(2)(ii)(B) of this section. T is the chief executive officer (CEO) of F. As CEO, T is responsible for overseeing the activities of F. T's duties as CEO make

him a disqualified person with respect to F. T's compensation package with F represents the maximum reasonable compensation for T's services as CEO. Thus, any additional economic benefits that F provides to T without T providing additional consideration constitute an excess benefit. D contracts with T to provide enumerated consulting services to D. However, the contract does not require T to perform any additional services for D that T is not already obligated to perform as F's chief executive officer. Therefore, any payment to T pursuant to the consulting contract with D represents an indirect excess benefit that F provides through a controlled entity, even if F, D, or T treats the additional payment to T as compensation.

Example 3. P is an applicable tax-exempt organization for purposes of section 4958. S is a taxable entity controlled by P within the meaning of paragraph (a)(2)(ii)(B) of this section. V is the chief executive officer of S, for which S pays V $w in salary and benefits. V also serves as a voting member of P's governing body. Consequently, V is a disqualified person with respect to P. P provides V with $x representing compensation for the services V provides P as a member of its governing body. Although $x represents reasonable compensation for the services V provides directly to P as a member of its governing body, the total compensation of $w + $x exceeds reasonable compensation for the services V provides to P and S collectively. Therefore, the portion of total compensation that exceeds reasonable compensation is an excess benefit provided to V.

Example 4. G is an applicable tax-exempt organization for section 4958 purposes. F is a disqualified person who was last employed by G in a position of substantial influence three years ago. H is an entity engaged in scientific research and is unrelated to either F or G. G makes a grant to H to fund a research position. H subsequently advertises for qualified candidates for the research position. F is among several highly qualified candidates who apply for the research position. H hires F. There was no evidence of an oral or written agreement or understanding with G that H will use G's grant to provide economic benefits to or for the use of F. Although G provided economic benefits to H, and in connection with the receipt of such benefits, H will provide economic benefits to or for the use of F, H acted with a significant business purpose or exempt purpose of its own. Under these facts, G did not provide an economic benefit to F indirectly through the use of an intermediary.

(3) *Exception for fixed payments made pursuant to an initial contract*—(i) *In general.* Except as provided in paragraph (a)(3)(iv) of this section, section 4958 does not apply to any fixed payment made to a person pursuant to an initial contract.

(ii) *Fixed payment*—(A) *In general.* For purposes of paragraph (a)(3)(i) of this section, *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is to be paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies, provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment (such as a bonus). A specified event or contingency may include the amount of revenues generated by (or other objective measure of) one or more activities of the applicable tax-exempt organization. A fixed payment does not include any amount paid to a person under a reimbursement (or similar) arrangement where discretion is exercised by any person with respect to the amount of expenses incurred or reimbursed.

(B) *Special rules.* Amounts payable pursuant to a qualified pension, profit-sharing, or stock bonus plan under section 401(a), or pursuant to an employee benefit program that is subject to and satisfies coverage and nondiscrimination rules under the Internal Revenue Code (e.g., sections 127 and 137), other than nondiscrimination rules under section 9802, are treated as fixed payments for purposes of this section, regardless of the applicable tax-exempt organization's discretion with respect to the plan or program. The fact that a person contracting with an applicable tax-exempt organization is expressly granted the choice whether to accept or reject any economic benefit is disregarded in determining whether the benefit constitutes a fixed payment for purposes of this paragraph.

(iii) *Initial contract.* For purposes of paragraph (a)(3)(i) of this section, *initial contract* means a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the contract.

(iv) *Substantial performance required.* Paragraph (a)(3)(i) of this section does not apply to any fixed payment made pursuant to the initial contract during any taxable year of the person contracting with the applicable tax-exempt organization if the person fails to perform substantially the person's obligations under the initial contract during that year.

(v) *Treatment as a new contract.* A written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization (other than as a result of a lack of substantial performance by the disqualified person, as described in paragraph (a)(3)(iv) of this section) without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract, it is treated as a new contract as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any amount payable under the contract. The new contract is tested under paragraph (a)(3)(iii) of this section to determine whether it is an initial contract for purposes of this section.

(vi) *Evaluation of non-fixed payments.* Any payment that is not a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) is evaluated to determine whether it constitutes an excess benefit transaction under section 4958. In making this determination, all payments and consideration exchanged between the parties are taken into account, including any fixed payments made pursuant to an initial contract with respect to which section 4958 does not apply.

(vii) *Examples.* The following examples illustrate the rules governing fixed payments made pursuant to an initial contract. Unless otherwise stated, assume that the person contracting with the applicable tax-exempt organization has performed substantially the person's obligations under the contract with respect to the payment. The examples are as follows:

Example 1. T is an applicable tax-exempt organization for purposes of section 4958. On January 1, 2002, T hires S as its chief financial officer by entering into a five-year written employment contract with S. S was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the January 1, 2002, contract (initial contract). S's duties and responsibilities under the contract make S a disqualified person with respect to T (see § 53.4958–3(a)). Under the initial contract, T agrees to pay S an annual salary of $200,000, payable in monthly installments. The contract provides that, beginning in 2003, S's annual salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. Section 4958 does not apply because S's compensation under the contract is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. Thus, for section 4958 purposes, it is unnecessary to evaluate whether any

portion of the compensation paid to S pursuant to the initial contract is an excess benefit transaction.

Example 2. The facts are the same as in *Example 1*, except that the initial contract provides that, in addition to a base salary of $200,000, T may pay S an annual performance-based bonus. The contract provides that T's governing body will determine the amount of the annual bonus as of the end of each year during the term of the contract, based on the board's evaluation of S's performance, but the bonus cannot exceed $100,000 per year. Unlike the base salary portion of S's compensation, the bonus portion of S's compensation is not a fixed payment pursuant to an initial contract, because the governing body has discretion over the amount, if any, of the bonus payment. Section 4958 does not apply to payment of the $200,000 base salary (as adjusted for inflation), because it is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. By contrast, the annual bonuses that may be paid to S under the initial contract are not protected by the initial contract exception. Therefore, each bonus payment will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 3. The facts are the same as in *Example 1*, except that in 2003, T changes its payroll system, such that T makes biweekly, rather than monthly, salary payments to its employees. Beginning in 2003, T also grants its employees an additional two days of paid vacation each year. Neither change is a material change to S's initial contract within the meaning of paragraph (a)(3)(v) of this section. Therefore, section 4958 does not apply to the base salary payments to S due to the initial contract exception.

Example 4. The facts are the same as in *Example 1*, except that on January 1, 2003, S becomes the chief executive officer of T and a new chief financial officer is hired. At the same time, T's board of directors approves an increase in S's annual base salary from $200,000 to $240,000, effective on that day. These changes in S's employment relationship constitute material changes of the initial contract within the meaning of paragraph (a)(3)(v) of this section. As a result, S is treated as entering into a new contract with T on January 1, 2003, at which time S is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3. T's payments to S made pursuant to the new contract will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 5. J is a performing arts organization and an applicable tax-exempt organization for purposes of section 4958. J hires W to become the chief executive officer of J. W was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the employment contract with J. As a result of this employment contract, W's duties and responsibilities make W a disqualified person with respect to J (see § 53.4958–3(c)(2)). Under the contract, J will pay W $*x* (a specified amount) plus a bonus equal to 2 percent of the total season subscription sales that exceed $*100x*. The $*x* base salary is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. The bonus payment is also a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section, because no person exercises discretion when calculating the amount of the bonus payment or deciding whether the bonus will be paid. Therefore, section 4958 does not apply to any of J's payments to W pursuant to the employment contract due to the initial contract exception.

Example 6. Hospital B is an applicable tax-exempt organization for purposes of section 4958. Hospital B hires E as its chief operating officer. E was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the employment contract with Hospital B. As a result of this employment contract, E's duties and responsibilities make E a disqualified person with respect to Hospital B (see § 53.4958–3(c)(2)). E's initial employment contract provides that E will have authority to enter into hospital management arrangements on behalf of Hospital B. In E's personal capacity, E owns more than 35 percent of the combined voting power of Company X. Consequently, at the time E becomes a disqualified person with respect to B, Company X also becomes a disqualified person with respect to B (see § 53.4958–3(b)(2)(i)(A)). E, acting on behalf of Hospital B as chief operating officer, enters into a contract with Company X under which Company X will provide billing and collection services to Hospital B. The initial contract exception of paragraph (a)(3)(i) of this section does not apply to the billing and collection services contract, because at the time that this contractual arrangement was entered into, Company X was a disqualified person with respect to Hospital B. Although E's employment contract (which is an initial contract) authorizes E to enter into hospital management arrangements on behalf of Hospital B, the payments made to Company X are not made pursuant to E's employment contract, but rather are made by Hospital B pursuant to a separate contractual arrangement with Company X. Therefore, even if payments made to Company X under the billing and collection services contract are fixed payments (within the meaning of paragraph (a)(3)(ii) of this section), section 4958 nonetheless applies to payments made by Hospital B to Company X because the billing and collection services contract itself does not constitute an initial contract under paragraph (a)(3)(iii) of this section. Accordingly, all payments made to Company X under the billing and collection services contract will be evaluated under section 4958.

Example 7. Hospital C, an applicable tax-exempt organization, enters into a contract with Company Y, under which Company Y will provide a wide range of hospital management services to Hospital C. Upon entering into this contractual arrangement, Company Y becomes a disqualified person with respect to Hospital C. The contract provides that Hospital C will pay Company Y a management fee of *x* percent of adjusted gross revenue (*i.e.*, gross revenue increased by the cost of charity care provided to indigents) annually for a five-year period. The management services contract specifies the cost accounting system and the standards for *indigents* to be used in calculating the cost of charity care. The cost accounting system objectively defines the direct and indirect costs of all health care goods and services provided as charity care. Because Company Y was not a disqualified person with respect to Hospital C immediately before entering into the management services contract, that contract is an initial contract within the meaning of paragraph (a)(3)(iii) of this section. The annual management fee paid to Company Y is determined by a fixed formula specified in the contract, and is therefore a fixed payment within the meaning of paragraph (a)(3)(ii) of this section. Accordingly, section 4958 does not apply to the annual management fee due to the initial contract exception.

Example 8. The facts are the same as in *Example 7*, except that the management services contract also provides that Hospital C will reimburse Company Y on a monthly basis for certain expenses incurred by Company Y that are attributable to management services provided to Hospital C (e.g., legal fees and travel expenses). Although the management fee itself is a fixed payment not subject to section 4958, the reimbursement payments that Hospital C makes to Company Y for the various expenses covered by the contract are not fixed payments within the meaning of paragraph (a)(3)(ii) of this section, because Company Y exercises discretion with respect to the amount of expenses incurred. Therefore, any reimbursement payments that Hospital C pays pursuant to the contract will be evaluated under section 4958.

Example 9. X, an applicable tax-exempt organization for purposes of section 4958, hires C to conduct scientific research. On January 1, 2003, C enters into a three-year written employment contract with X (initial contract). Under the terms of the contract, C is required to work full-time at X's laboratory for a fixed annual salary of $90,000. Immediately prior to entering into the employment contract, C was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3, nor did C become a disqualified person pursuant to the initial contract. However, two years after joining X, C marries D, who is the child of X's president. As D's spouse, C is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 with respect to X. Nonetheless, section 4958 does not apply to X's salary payments to C due to the initial contract exception.

Example 10. The facts are the same as in *Example 9*, except that the initial contract included a below-market loan provision under which C has the unilateral right to borrow up to a specified dollar amount from X at a specified interest rate for a specified term. After C's marriage to D, C borrows money from X to purchase a home under the terms of the initial contract. Section 4958 does not apply to X's loan to C due to the initial contract exception.

Example 11. The facts are the same as in *Example 9*, except that after C's marriage to

D, C works only sporadically at the laboratory, and performs no other services for X. Notwithstanding that C fails to perform substantially C's obligations under the initial contract, X does not exercise its right to terminate the initial contract for nonperformance and continues to pay full salary to C. Pursuant to paragraph (a)(3)(iv) of this section, the initial contract exception does not apply to any payments made pursuant to the initial contract during any taxable year of C in which C fails to perform substantially C's obligations under the initial contract.

(4) *Certain economic benefits disregarded for purposes of section 4958.* The following economic benefits are disregarded for purposes of section 4958—

(i) *Nontaxable fringe benefits.* An economic benefit that is excluded from income under section 132, except any liability insurance premium, payment, or reimbursement that must be taken into account under paragraph (b)(1)(ii)(B)(*2*) of this section;

(ii) *Expense reimbursement payments pursuant to accountable plans.* Amounts paid under reimbursement arrangements that meet the requirements of § 1.62–2(c) of this chapter;

(iii) *Certain economic benefits provided to a volunteer for the organization.* An economic benefit provided to a volunteer for the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of $75 or less per year;

(iv) *Certain economic benefits provided to a member of, or donor to, the organization.* An economic benefit provided to a member of an organization solely on account of the payment of a membership fee, or to a donor solely on account of a contribution for which a deduction is allowable under section 170 (charitable contribution), regardless of whether the donor is eligible to claim the deduction, if—

(A) Any non-disqualified person paying a membership fee or making a charitable contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit; and

(B) The disqualified person and a significant number of non-disqualified persons make a payment or charitable contribution of at least the specified amount;

(v) *Economic benefits provided to a charitable beneficiary.* An economic benefit provided to a person solely because the person is a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of the organization's exempt purpose; and

(vi) *Certain economic benefits provided to a governmental unit.* Any transfer of an economic benefit to or for the use of a governmental unit defined in section 170(c)(1), if the transfer is for exclusively public purposes.

(5) *Exception for certain payments made pursuant to an exemption granted by the Department of Labor under ERISA.* Section 4958 does not apply to any payment made pursuant to, and in accordance with, a final individual prohibited transaction exemption issued by the Department of Labor under section 408(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 854) (ERISA) with respect to a transaction involving a plan (as defined in section 3(3) of ERISA) that is an applicable tax exempt organization.

(b) *Valuation standards*—(1) *In general.* This section provides rules for determining the value of economic benefits for purposes of section 4958.

(i) *Fair market value of property.* The value of property, including the right to use property, for purposes of section 4958 is the fair market value (*i.e.*, the price at which property or the right to use property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property, and both having reasonable knowledge of relevant facts).

(ii) *Reasonable compensation*—(A) *In general.* The value of services is the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances (*i.e.*, reasonable compensation). Section 162 standards apply in determining reasonableness of compensation, taking into account the aggregate benefits (other than any benefits specifically disregarded under paragraph (a)(4) of this section) provided to a person and the rate at which any deferred compensation accrues. The fact that a compensation arrangement is subject to a cap is a relevant factor in determining the reasonableness of compensation. The fact that a State or local legislative or agency body or court has authorized or approved a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation for purposes of section 4958.

(B) *Items included in determining the value of compensation for purposes of determining reasonableness under section 4958.* Except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, compensation for purposes of determining reasonableness under section 4958 includes all economic benefits provided by an applicable tax-exempt organization in exchange for the performance of services. These benefits include, but are not limited to—

(*1*) All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred and noncash compensation described in § 53.4958–1(e)(2);

(*2*) Unless excludable from income as a *de minimis* fringe benefit pursuant to section 132(a)(4), the payment of liability insurance premiums for, or the payment or reimbursement by the organization of—

(*i*) Any penalty, tax, or expense of correction owed under section 4958;

(*ii*) Any expense not reasonably incurred by the person in connection with a civil judicial or civil administrative proceeding arising out of the person's performance of services on behalf of the applicable tax-exempt organization; or

(*iii*) Any expense resulting from an act or failure to act with respect to which the person has acted willfully and without reasonable cause; and

(*3*) All other compensatory benefits, whether or not included in gross income for income tax purposes, including payments to welfare benefit plans, such as plans providing medical, dental, life insurance, severance pay, and disability benefits, and both taxable and nontaxable fringe benefits (other than fringe benefits described in section 132), including expense allowances or reimbursements (other than expense reimbursements pursuant to an accountable plan that meets the requirements of § 1.62–2(c)), and the economic benefit of a below-market loan (within the meaning of section 7872(e)(1)). (For this purpose, the economic benefit of a below-market loan is the amount deemed transferred to the disqualified person under section 7872(a) or (b), regardless of whether section 7872 otherwise applies to the loan).

(C) *Inclusion in compensation for reasonableness determination does not govern income tax treatment.* The determination of whether any item listed in paragraph (b)(1)(ii)(B) of this section is included in the disqualified person's gross income for income tax purposes is made on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code, without regard to whether the item is taken into account for purposes of determining reasonableness of compensation under section 4958.

(2) *Timing of reasonableness determination*—(i) *In general.* The facts and circumstances to be taken into consideration in determining reasonableness of a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) are those existing on the date the parties enter into the contract pursuant to which the payment is made. However, in the event of substantial non-performance, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In the case of any payment that is not a fixed payment under a contract, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In no event shall circumstances existing at the date when the payment is questioned be considered in making a determination of the reasonableness of the payment. These general timing rules also apply to property subject to a substantial risk of forfeiture. Therefore, if the property subject to a substantial risk of forfeiture satisfies the definition of fixed payment (within the meaning of paragraph (a)(3)(ii) of this section), reasonableness is determined at the time the parties enter into the contract providing for the transfer of the property. If the property is not a fixed payment, then reasonableness is determined based on all facts and circumstances up to and including circumstances as of the date of payment.

(ii) *Treatment as a new contract.* For purposes of paragraph (b)(2)(i) of this section, a written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract (within the meaning of paragraph (a)(3)(v) of this section), it is treated as a new contract as of the date the material change is effective.

(iii) *Examples.* The following examples illustrate the timing of the reasonableness determination under the rules of this paragraph (b)(2):

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. H is an employee of G and a disqualified person with respect to G. H's new multi-year employment contract provides for payment of a salary and provision of specific benefits pursuant to a qualified pension plan under section 401(a) and an accident and health plan that meets the requirements of section 105(h)(2). The contract provides that H's salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. The contributions G makes to the qualified pension plan are equal to the maximum amount G is permitted to contribute under the rules applicable to qualified plans. Under these facts, all items comprising H's total compensation are treated as fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of H's compensation is determined based on the circumstances existing at the time G and H enter into the employment contract.

Example 2. The facts are the same as in *Example 1*, except that the multi-year employment contract provides, in addition, that G will transfer title to a car to H under the condition that if H fails to complete *x* years of service with G, title to the car will be forfeited back to G. All relevant information about the type of car to be provided (including the make, model, and year) is included in the contract. Although ultimate vesting of title to the car is contingent on H continuing to work for G for *x* years, the amount of property to be vested (i.e., the type of car) is specified in the contract, and no person exercises discretion regarding the type of property or whether H will retain title to the property at the time of vesting. Under these facts, the car is a fixed payment within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of H's compensation, including the value of the car, is determined based on the circumstances existing at the time G and H enter into the employment contract.

Example 3. N is an applicable tax-exempt organization for purposes of section 4958. On January 2, N's governing body enters into a new one-year employment contract with K, its executive director, who is a disqualified person with respect to N. The contract provides that K will receive a specified amount of salary, contributions to a qualified pension plan under section 401(a), and other benefits pursuant to a section 125 cafeteria plan. In addition, the contract provides that N's governing body may, in its discretion, declare a bonus to be paid to K at any time during the year covered by the contract. K's salary and other specified benefits constitute fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of those economic benefits is determined on the date when the contract was made. However, because the bonus payment is not a fixed payment within the meaning of paragraph (a)(3)(ii) of this section, the determination of whether any bonus awarded to N is reasonable must be made based on all facts and circumstances (including all payments and consideration exchanged between the parties), up to and including circumstances as of the date of payment of the bonus.

(c) *Establishing intent to treat economic benefit as consideration for the performance of services*—(1) *In general.* An economic benefit is not treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid. Except as provided in paragraph (c)(2) of this section, an applicable tax-exempt organization (or entity controlled by an applicable tax-exempt organization, within the meaning of paragraph (a)(2)(ii)(B) of this section) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefit at issue. If an organization fails to provide this contemporaneous substantiation, any services provided by the disqualified person will not be treated as provided in consideration for the economic benefit for purposes of determining the reasonableness of the transaction. In no event shall an economic benefit that a disqualified person obtains by theft or fraud be treated as consideration for the performance of services.

(2) *Nontaxable benefits.* For purposes of section 4958(c)(1)(A) and this section, an applicable tax-exempt organization is not required to indicate its intent to provide an economic benefit as compensation for services if the economic benefit is excluded from the disqualified person's gross income for income tax purposes on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code. Examples of these benefits include, but are not limited to, employer-provided health benefits and contributions to a qualified pension, profit-sharing, or stock bonus plan under section 401(a), and benefits described in sections 127 and 137. However, except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, all compensatory benefits (regardless of the Federal income tax treatment) provided by an organization in exchange for the performance of services are taken into account in determining the reasonableness of a person's compensation for purposes of section 4958.

(3) *Contemporaneous substantiation*—(i) *Reporting of benefit*—(A) *In general.* An applicable tax-exempt organization provides contemporaneous written substantiation of its intent to provide an economic benefit as compensation if—

(*1*) The organization reports the economic benefit as compensation on an original Federal tax information return with respect to the payment (e.g., Form W–2, "Wage and Tax Statement", or Form 1099, "Miscellaneous Income") or with respect to the organization (e.g.,

Form 990, "Return of Organization Exempt From Income Tax"), or on an amended Federal tax information return filed prior to the commencement of an Internal Revenue Service examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction occurred (as determined under § 53.4958–1(e)); or

(*2*) The recipient disqualified person reports the benefit as income on the person's original Federal tax return (e.g., Form 1040, "U.S. Individual Income Tax Return"), or on the person's amended Federal tax return filed prior to the earlier of the following dates—

(*i*) Commencement of an Internal Revenue Service examination described in paragraph (c)(3)(i)(A)(*1*) of this section; or

(*ii*) The first documentation in writing by the Internal Revenue Service of a potential excess benefit transaction involving either the applicable tax-exempt organization or the disqualified person.

(B) *Failure to report due to reasonable cause.* If an applicable tax-exempt organization's failure to report an economic benefit as required under the Internal Revenue Code is due to reasonable cause (within the meaning of § 301.6724–1 of this chapter), then the organization will be treated as having clearly indicated its intent to provide an economic benefit as compensation for services. To show that its failure to report an economic benefit that should have been reported on an information return was due to reasonable cause, an applicable tax-exempt organization must establish that there were significant mitigating factors with respect to its failure to report (as described in § 301.6724–1(b) of this chapter), or the failure arose from events beyond the organization's control (as described in § 301.6724–1(c) of this chapter), and that the organization acted in a responsible manner both before and after the failure occurred (as described in § 301.6724–1(d) of this chapter).

(ii) *Other written contemporaneous evidence.* In addition, other written contemporaneous evidence may be used to demonstrate that the appropriate decision-making body or an officer authorized to approve compensation approved a transfer as compensation for services in accordance with established procedures, including but not limited to—

(A) An approved written employment contract executed on or before the date of the transfer;

(B) Documentation satisfying the requirements of § 53.4958–6(a)(3) indicating that an authorized body approved the transfer as compensation for services on or before the date of the transfer; or

(C) Written evidence that was in existence on or before the due date of the applicable Federal tax return described in paragraph (c)(3)(i)(A)(*1*) or (*2*) of this section (including extensions but not amendments), of a reasonable belief by the applicable tax-exempt organization that a benefit was a nontaxable benefit as defined in paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the requirement that an organization contemporaneously substantiate its intent to provide an economic benefit as compensation for services, as defined in paragraph (c) of this section:

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. G hires an individual contractor, P, who is also the child of a disqualified person of G, to design a computer program for it. G executes a contract with P for that purpose in accordance with G's established procedures, and pays P $1,000 during the year pursuant to the contract. Before January 31 of the next year, G reports the full amount paid to P under the contract on a Form 1099 filed with the Internal Revenue Service. G will be treated as providing contemporaneous written substantiation of its intent to provide the $1,000 paid to P as compensation for the services P performed under the contract by virtue of either the Form 1099 filed with the Internal Revenue Service reporting the amount, or by virtue of the written contract executed between G and P.

Example 2. G is an applicable tax-exempt organization for purposes of section 4958. D is the chief operating officer of G, and a disqualified person with respect to G. D receives a bonus at the end of the year. G's accounting department determines that the bonus is to be reported on D's Form W–2. Due to events beyond G's control, the bonus is not reflected on D's Form W–2. As a result, D fails to report the bonus on his individual income tax return. G acts to amend Forms W–2 affected as soon as G is made aware of the error during an Internal Revenue Service examination. G's failure to report the bonus on an information return issued to D arose from events beyond G's control, and G acted in a responsible manner both before and after the failure occurred. Thus, because G had reasonable cause (within the meaning § 301.6724–1 of this chapter) for failing to report D's bonus, G will be treated as providing contemporaneous written substantiation of its intent to provide the bonus as compensation for services when paid.

Example 3. H is an applicable tax-exempt organization and J is a disqualified person with respect to H. J's written employment agreement provides for a fixed salary of $y. J's duties include soliciting funds for various programs of H. H raises a large portion of its funds in a major metropolitan area. Accordingly, H maintains an apartment there in order to provide a place to entertain potential donors. H makes the apartment available exclusively to J to assist in the fundraising. J's written employment contract does not mention the use of the apartment. H obtains the written opinion of a benefits compensation expert that the rental value of the apartment is not includable in J's income by reason of section 119, based on the expectation that the apartment will be used for fundraising activities. Consequently, H does not report the rental value of the apartment on J's Form W–2, which otherwise correctly reports J's taxable compensation. J does not report the rental value of the apartment on J's individual Form 1040. Later, the Internal Revenue Service correctly determines that the requirements of section 119 were not satisfied. Because of the written expert opinion, H has written evidence of its reasonable belief that use of the apartment was a nontaxable benefit as defined in paragraph (c)(2) of this section. That evidence was in existence on or before the due date of the applicable Federal tax return. Therefore, H has demonstrated its intent to treat the use of the apartment as compensation for services performed by J.

§ 53.4958–5 Transaction in which the amount of the economic benefit is determined in whole or in part by the revenues of one or more activities of the organization. [Reserved]

§ 53.4958–6 Rebuttable presumption that a transaction is not an excess benefit transaction.

(a) *In general.* Payments under a compensation arrangement are presumed to be reasonable, and a transfer of property, or the right to use property, is presumed to be at fair market value, if the following conditions are satisfied—

(1) The compensation arrangement or the terms of the property transfer are approved in advance by an authorized body of the applicable tax-exempt organization (or an entity controlled by the organization within the meaning of § 53.4958–4(a)(2)(ii)(B)) composed entirely of individuals who do not have a conflict of interest (within the meaning of paragraph (c)(1)(iii) of this section) with respect to the compensation arrangement or property transfer, as described in paragraph (c)(1) of this section;

(2) The authorized body obtained and relied upon appropriate data as to comparability prior to making its determination, as described in paragraph (c)(2) of this section; and

(3) The authorized body adequately documented the basis for its determination concurrently with making that determination, as described in paragraph (c)(3) of this section.

(b) *Rebutting the presumption.* If the three requirements of paragraph (a) of this section are satisfied, then the Internal Revenue Service may rebut the presumption that arises under

paragraph (a) of this section only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. With respect to any fixed payment (within the meaning of § 53.4958–4(a)(3)(ii)), rebuttal evidence is limited to evidence relating to facts and circumstances existing on the date the parties enter into the contract pursuant to which the payment is made (except in the event of substantial nonperformance). With respect to all other payments (including non-fixed payments subject to a cap, as described in paragraph (d)(2) of this section), rebuttal evidence may include facts and circumstances up to and including the date of payment. See § 53.4958–4(b)(2)(i).

(c) *Requirements for invoking rebuttable presumption*—(1) *Approval by an authorized body*—(i) *In general.* An authorized body means—

(A) The governing body (i.e., the board of directors, board of trustees, or equivalent controlling body) of the organization;

(B) A committee of the governing body, which may be composed of any individuals permitted under State law to serve on such a committee, to the extent that the committee is permitted by State law to act on behalf of the governing body; or

(C) To the extent permitted under State law, other parties authorized by the governing body of the organization to act on its behalf by following procedures specified by the governing body in approving compensation arrangements or property transfers.

(ii) *Individuals not included on authorized body.* For purposes of determining whether the requirements of paragraph (a) of this section have been met with respect to a specific compensation arrangement or property transfer, an individual is not included on the authorized body when it is reviewing a transaction if that individual meets with other members only to answer questions, and otherwise recuses himself or herself from the meeting and is not present during debate and voting on the compensation arrangement or property transfer.

(iii) *Absence of conflict of interest.* A member of the authorized body does not have a conflict of interest with respect to a compensation arrangement or property transfer only if the member—

(A) Is not a disqualified person participating in or economically benefitting from the compensation arrangement or property transfer, and is not a member of the family of any such disqualified person, as described in section 4958(f)(4) or § 53.4958–3(b)(1);

(B) Is not in an employment relationship subject to the direction or control of any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(C) Does not receive compensation or other payments subject to approval by any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(D) Has no material financial interest affected by the compensation arrangement or property transfer; and

(E) Does not approve a transaction providing economic benefits to any disqualified person participating in the compensation arrangement or property transfer, who in turn has approved or will approve a transaction providing economic benefits to the member.

(2) *Appropriate data as to comparability*—(i) *In general.* An authorized body has appropriate data as to comparability if, given the knowledge and expertise of its members, it has information sufficient to determine whether, under the standards set forth in § 53.4958–4(b), the compensation arrangement in its entirety is reasonable or the property transfer is at fair market value. In the case of compensation, relevant information includes, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the availability of similar services in the geographic area of the applicable tax-exempt organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the disqualified person. In the case of property, relevant information includes, but is not limited to, current independent appraisals of the value of all property to be transferred; and offers received as part of an open and competitive bidding process.

(ii) *Special rule for compensation paid by small organizations.* For organizations with annual gross receipts (including contributions) of less than $1 million reviewing compensation arrangements, the authorized body will be considered to have appropriate data as to comparability if it has data on compensation paid by three comparable organizations in the same or similar communities for similar services. No inference is intended with respect to whether circumstances falling outside this safe harbor will meet the requirement with respect to the collection of appropriate data.

(iii) *Application of special rule for small organizations.* For purposes of determining whether the special rule for small organizations described in paragraph (c)(2)(ii) of this section applies, an organization may calculate its annual gross receipts based on an average of its gross receipts during the three prior taxable years. If any applicable tax-exempt organization is controlled by or controls another entity (as defined in § 53.4958–4(a)(2)(ii)(B)), the annual gross receipts of such organizations must be aggregated to determine applicability of the special rule stated in paragraph (c)(2)(ii) of this section.

(iv) *Examples.* The following examples illustrate the rules for appropriate data as to comparability for purposes of invoking the rebuttable presumption of reasonableness described in this section. In all examples, compensation refers to the aggregate value of all benefits provided in exchange for services. The examples are as follows:

Example 1. Z is a university that is an applicable tax-exempt organization for purposes of section 4958. Z is negotiating a new contract with Q, its president, because the old contract will expire at the end of the year. In setting Q's compensation for its president at $600*x* per annum, the executive committee of the Board of Trustees relies solely on a national survey of compensation for university presidents that indicates university presidents receive annual compensation in the range of $100*x* to $700*x*; this survey does not divide its data by any criteria, such as the number of students served by the institution, annual revenues, academic ranking, or geographic location. Although many members of the executive committee have significant business experience, none of the members has any particular expertise in higher education compensation matters. Given the failure of the survey to provide information specific to universities comparable to Z, and because no other information was presented, the executive committee's decision with respect to Q's compensation was not based upon appropriate data as to comparability.

Example 2. The facts are the same as *Example 1*, except that the national compensation survey divides the data regarding compensation for university presidents into categories based on various university-specific factors, including the size of the institution (in terms of the number of students it serves and the amount of its revenues) and geographic area. The survey data shows that university presidents at institutions comparable to and in the same geographic area as Z receive annual compensation in the range of $200*x* to $300*x*. The executive committee of the Board of Trustees of Z relies on the survey data and its evaluation of Q's many years of service as a tenured professor and high-ranking university official at Z in setting Q's compensation at $275*x* annually. The data relied upon by the executive committee

constitutes appropriate data as to comparability.

Example 3. X is a tax-exempt hospital that is an applicable tax-exempt organization for purposes of section 4958. Before renewing the contracts of X's chief executive officer and chief financial officer, X's governing board commissioned a customized compensation survey from an independent firm that specializes in consulting on issues related to executive placement and compensation. The survey covered executives with comparable responsibilities at a significant number of taxable and tax-exempt hospitals. The survey data are sorted by a number of different variables, including the size of the hospitals and the nature of the services they provide, the level of experience and specific responsibilities of the executives, and the composition of the annual compensation packages. The board members were provided with the survey results, a detailed written analysis comparing the hospital's executives to those covered by the survey, and an opportunity to ask questions of a member of the firm that prepared the survey. The survey, as prepared and presented to X's board, constitutes appropriate data as to comparability.

Example 4. The facts are the same as *Example 3*, except that one year later, X is negotiating a new contract with its chief executive officer. The governing board of X obtains information indicating that the relevant market conditions have not changed materially, and possesses no other information indicating that the results of the prior year's survey are no longer valid. Therefore, X may continue to rely on the independent compensation survey prepared for the prior year in setting annual compensation under the new contract.

Example 5. W is a local repertory theater and an applicable tax-exempt organization for purposes of section 4958. W has had annual gross receipts ranging from $400,000 to $800,000 over its past three taxable years. In determining the next year's compensation for W's artistic director, the board of directors of W relies on data compiled from a telephone survey of three other unrelated performing arts organizations of similar size in similar communities. A member of the board drafts a brief written summary of the annual compensation information obtained from this informal survey. The annual compensation information obtained in the telephone survey is appropriate data as to comparability.

(3) *Documentation*—(i) For a decision to be documented adequately, the written or electronic records of the authorized body must note—

(A) The terms of the transaction that was approved and the date it was approved;

(B) The members of the authorized body who were present during debate on the transaction that was approved and those who voted on it;

(C) The comparability data obtained and relied upon by the authorized body and how the data was obtained; and

(D) Any actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the transaction.

(ii) If the authorized body determines that reasonable compensation for a specific arrangement or fair market value in a specific property transfer is higher or lower than the range of comparability data obtained, the authorized body must record the basis for its determination. For a decision to be documented concurrently, records must be prepared before the later of the next meeting of the authorized body or 60 days after the final action or actions of the authorized body are taken. Records must be reviewed and approved by the authorized body as reasonable, accurate and complete within a reasonable time period thereafter.

(d) *No presumption with respect to non-fixed payments until amounts are determined*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, in the case of a payment that is not a fixed payment (within the meaning of § 53.4958–4(a)(3)(ii)), the rebuttable presumption of this section arises only after the exact amount of the payment is determined, or a fixed formula for calculating the payment is specified, and the three requirements for the presumption under paragraph (a) of this section subsequently are satisfied. See § 53.4958–4(b)(2)(i).

(2) *Special rule for certain non-fixed payments subject to a cap.* If the authorized body approves an employment contract with a disqualified person that includes a non-fixed payment (such as a discretionary bonus) subject to a specified cap, the authorized body may establish a rebuttable presumption with respect to the non-fixed payment at the time the employment contract is entered into if—

(i) Prior to approving the contract, the authorized body obtains appropriate comparability data indicating that a fixed payment of up to a certain amount to the particular disqualified person would represent reasonable compensation;

(ii) The maximum amount payable under the contract (taking into account both fixed and non-fixed payments) does not exceed the amount referred to in paragraph (d)(2)(i) of this section; and

(iii) The other requirements for the rebuttable presumption of reasonableness under paragraph (a) of this section are satisfied.

(e) *No inference from absence of presumption.* The fact that a transaction between an applicable tax-exempt organization and a disqualified person is not subject to the presumption described in this section neither creates any inference that the transaction is an excess benefit transaction, nor exempts or relieves any person from compliance with any Federal or state law imposing any obligation, duty, responsibility, or other standard of conduct with respect to the operation or administration of any applicable tax-exempt organization.

(f) *Period of reliance on rebuttable presumption.* Except as provided in paragraph (d) of this section with respect to non-fixed payments, the rebuttable presumption applies to all payments made or transactions completed in accordance with a contract, provided that the provisions of paragraph (a) of this section were met at the time the parties entered into the contract.

§ 53.4958–7 Correction.

(a) *In general.* An excess benefit transaction is corrected by undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the applicable tax-exempt organization involved in the excess benefit transaction in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. Paragraph (b) of this section describes the acceptable forms of correction. Paragraph (c) of this section defines the correction amount. Paragraph (d) of this section describes correction where a contract has been partially performed. Paragraph (e) of this section describes correction where the applicable tax-exempt organization involved in the transaction has ceased to exist or is no longer tax-exempt. Paragraph (f) of this section provides examples illustrating correction.

(b) *Form of correction*—(1) *Cash or cash equivalents.* Except as provided in paragraphs (b)(3) and (4) of this section, a disqualified person corrects an excess benefit only by making a payment in cash or cash equivalents, excluding payment by a promissory note, to the applicable tax-exempt organization equal to the correction amount, as defined in paragraph (c) of this section.

(2) *Anti-abuse rule.* A disqualified person will not satisfy the requirements of paragraph (b)(1) of this section if the Commissioner determines that the disqualified person engaged in one or more transactions with the applicable tax-exempt organization to circumvent the requirements of this correction section, and as a result, the disqualified person effectively transferred property other than cash or cash equivalents.

(3) *Special rule relating to nonqualified deferred compensation.* If an excess benefit transaction results, in whole or in part, from the vesting (as

described in § 53.4958–1(e)(2)) of benefits provided under a nonqualified deferred compensation plan, then, to the extent that such benefits have not yet been distributed to the disqualified person, the disqualified person may correct the portion of the excess benefit resulting from the undistributed deferred compensation by relinquishing any right to receive the excess portion of the undistributed deferred compensation (including any earnings thereon).

(4) *Return of specific property*—(i) *In general.* A disqualified person may, with the agreement of the applicable tax-exempt organization, make a payment by returning specific property previously transferred in the excess benefit transaction. In this case, the disqualified person is treated as making a payment equal to the lesser of—

(A) The fair market value of the property determined on the date the property is returned to the organization; or

(B) The fair market value of the property on the date the excess benefit transaction occurred.

(ii) *Payment not equal to correction amount.* If the payment described in paragraph (b)(4)(i) of this section is less than the correction amount (as described in paragraph (c) of this section), the disqualified person must make an additional cash payment to the organization equal to the difference. Conversely, if the payment described in paragraph (b)(4)(i) of this section exceeds the correction amount (as described in paragraph (c) of this section), the organization may make a cash payment to the disqualified person equal to the difference.

(iii) *Disqualified person may not participate in decision.* Any disqualified person who received an excess benefit from the excess benefit transaction may not participate in the applicable tax-exempt organization's decision whether to accept the return of specific property under paragraph (b)(4)(i) of this section.

(c) *Correction amount.* The correction amount with respect to an excess benefit transaction equals the sum of the excess benefit (as defined in § 53.4958–1(b)) and interest on the excess benefit. The amount of the interest charge for purposes of this section is determined by multiplying the excess benefit by an interest rate, compounded annually, for the period from the date the excess benefit transaction occurred (as defined in § 53.4958–1(e)) to the date of correction. The interest rate used for this purpose must be a rate that equals or exceeds the applicable Federal rate (AFR), compounded annually, for the month in which the transaction occurred. The period from the date the excess benefit transaction occurred to the date of correction is used to determine whether the appropriate AFR is the Federal short-term rate, the Federal mid-term rate, or the Federal long-term rate. See section 1274(d)(1)(A).

(d) *Correction where contract has been partially performed.* If the excess benefit transaction arises under a contract that has been partially performed, termination of the contractual relationship between the organization and the disqualified person is not required in order to correct. However, the parties may need to modify the terms of any ongoing contract to avoid future excess benefit transactions.

(e) *Correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt*—(1) *In general.* A disqualified person must correct an excess benefit transaction in accordance with this paragraph where the applicable tax-exempt organization that engaged in the transaction no longer exists or is no longer described in section 501(c)(3) or (4) and exempt from tax under section 501(a).

(2) *Section 501(c)(3) organizations.* In the case of an excess benefit transaction with a section 501(c)(3) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to another organization described in section 501(c)(3) and exempt from tax under section 501(a) in accordance with the dissolution clause contained in the constitutive documents of the applicable tax-exempt organization involved in the excess benefit transaction, provided that—

(i) The organization receiving the correction amount is described in section 170(b)(1)(A) (other than in section 170(b)(1)(A)(vii) and (viii)) and has been in existence and so described for a continuous period of at least 60 calendar months ending on the correction date;

(ii) The disqualified person is not also a disqualified person (as defined in § 53.4958–3) with respect to the organization receiving the correction amount; and

(iii) The organization receiving the correction amount does not allow the disqualified person (or persons described in § 53.4958–3(b) with respect to that person) to make or recommend any grants or distributions by the organization.

(3) *Section 501(c)(4) organizations.* In the case of an excess benefit transaction with a section 501(c)(4) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to a successor section 501(c)(4) organization or, if no tax-exempt successor, to any organization described in section 501(c)(3) or (4) and exempt from tax under section 501(a), provided that the requirements of paragraphs (e)(2)(i) through (iii) of this section are satisfied (except that the requirement that the organization receiving the correction amount is described in section 170(b)(1)(A) (other than in section 170(b)(1)(A)(vii) and (viii)) shall not apply if the organization is described in section 501(c)(4)).

(f) *Examples.* The following examples illustrate the principles of this section describing the requirements of correction:

Example 1. W is an applicable tax-exempt organization for purposes of section 4958. D is a disqualified person with respect to W. W employed D in 1999 and made payments totaling $12t to D as compensation throughout the taxable year. The fair market value of D's services in 1999 was $7t. Thus, D received excess compensation in the amount of $5t, the excess benefit for purposes of section 4958. In accordance with § 53.4958–1(e)(1), the excess benefit transaction with respect to the series of compensatory payments during 1999 is deemed to occur on December 31, 1999, the last day of D's taxable year. In order to correct the excess benefit transaction on June 30, 2002, D must pay W, in cash or cash equivalents, excluding payment with a promissory note, $5t (the excess benefit) plus interest on $5t for the period from the date the excess benefit transaction occurred to the date of correction (i.e., December 31, 1999, to June 30, 2002). Because this period is not more than three years, the interest rate D must use to determine the interest on the excess benefit must equal or exceed the short-term AFR, compounded annually, for December, 1999 (5.74%, compounded annually).

Example 2. X is an applicable tax-exempt organization for purposes of section 4958. B is a disqualified person with respect to X. On January 1, 2000, B paid X $6v for Property F. Property F had a fair market value of $10v on January 1, 2000. Thus, the sales transaction on that date provided an excess benefit to B in the amount of $4v. In order to correct the excess benefit on July 5, 2005, B pays X, in cash or cash equivalents, excluding payment with a promissory note, $4v (the excess benefit) plus interest on $4v for the period from the date the excess benefit transaction occurred to the date of correction (i.e., January 1, 2000, to July 5, 2005). Because this period is over three but not over nine years, the interest rate B must use to determine the interest on the excess benefit must equal or exceed the mid-term AFR, compounded annually, for January, 2000 (6.21%, compounded annually).

Example 3. The facts are the same as in *Example 2*, except that B offers to return

Property F. X agrees to accept the return of Property F, a decision in which B does not participate. Property F has declined in value since the date of the excess benefit transaction. On July 5, 2005, the property has a fair market value of $9v. For purposes of correction, B's return of Property F to X is treated as a payment of $9v, the fair market value of the property determined on the date the property is returned to the organization. If $9v is greater than the correction amount ($4v plus interest on $4v at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 4. The facts are the same as in *Example 3*, except that Property F has increased in value since January 1, 2000, the date the excess benefit transaction occurred, and on July 5, 2005, has a fair market value of $13v. For purposes of correction, B's return of Property F to X is treated as a payment of $10v, the fair market value of the property on the date the excess benefit transaction occurred. If $10v is greater than the correction amount ($4v plus interest on $4v at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 5. The facts are the same as in *Example 2*. Assume that the correction amount B paid X in cash on July 5, 2005, was $5.58v. On July 4, 2005, X loaned $5.58v to B, in exchange for a promissory note signed by B in the amount of $5.58v, payable with interest at a future date. These facts indicate that B engaged in the loan transaction to circumvent the requirement of this section that (except as provided in paragraph (b)(3) or (4) of this section), the correction amount must be paid only in cash or cash equivalents. As a result, the Commissioner may determine that B effectively transferred property other than cash or cash equivalents, and therefore did not satisfy the correction requirements of this section.

§ 53.4958–8 Special rules.

(a) *Substantive requirements for exemption still apply.* Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception described in § 53.4958–4(a)(3) may, under certain circumstances, jeopardize the organization's tax-exempt status.

(b) *Interaction between section 4958 and section 7611 rules for church tax inquiries and examinations.* The procedures of section 7611 will be used in initiating and conducting any inquiry or examination into whether an excess benefit transaction has occurred between a church and a disqualified person. For purposes of this rule, the reasonable belief required to initiate a church tax inquiry is satisfied if there is a reasonable belief that a section 4958 tax is due from a disqualified person with respect to a transaction involving a church. See § 301.7611–1 Q&A 19 of this chapter.

(c) *Other substantiation requirements.* These regulations, in § 53.4958–4(c)(3), set forth specific substantiation rules. Compliance with the specific substantiation rules of that section does not relieve applicable tax-exempt organizations of other rules and requirements of the Internal Revenue Code, regulations, Revenue Rulings, and other guidance issued by the Internal Revenue Service (including the substantiation rules of sections 162 and 274, or § 1.6001–1(a) and (c) of this chapter).

PART 301—PROCEDURE AND ADMINISTRATION

3. The authority citation for part 301 continues to read in part as follows:

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

§ 301.7611–1 [Amended]

4. In § 301.7611–1, Q–19 and A–19 at the end of the section are revised to read as follows:

§ 301.7611–1 Questions and answers relating to church tax inquiries and examinations.

* * * * *

Application to Section 4958

Q–19: When do the church tax inquiry and examination procedures described in section 7611 apply to a determination of whether there was an excess benefit transaction described in section 4958?

A–19: See § 53.4958–7(b) of this chapter for rules governing the interaction between section 4958 excise taxes on excess benefit transactions and section 7611 church tax inquiry and examination procedures.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

6. In § 602.101, paragraph (b) is amended by removing the entry for "53.4958–6T" and adding an entry for "53.4958–6" to the table in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
53.4958–6	1545–1623
* * * * *	

Approved: December 21, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–985 Filed 1–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AK91

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects Without Remanding

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) to permit the Board to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. It also allows the Board to consider additional evidence without having to refer the evidence to the agency of original jurisdiction for initial consideration and without having to obtain the appellant's waiver. By reducing the number of appeals remanded, VA intends to shorten appeal processing time and to reduce the backlog of claims awaiting decision.

DATES: *Effective Date:* These amendments are effective February 22, 2002.

Applicability Date: These amendments apply to appeals for which the notice of disagreement was filed on or after February 22, 2002, and to appeals pending, whether at the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, or

the United States Court of Appeals for the Federal Circuit, on February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals ((202) 565–5978), or Michael J. Timinski, Attorney, Office of General Counsel ((202) 273–6327), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits.

On August 6, 2001, VA published a notice of proposed rulemaking (NPRM) which would permit the Board to obtain evidence and correct procedural defects without remanding the case to the agency of original jurisdiction. 66 FR 40942 (2001). We received seven comments: Two from individuals; three from veterans service organizations; one from a state department of veterans affairs; and one from an association of attorneys.

For the reasons described below, we are adopting the regulations largely as proposed, but with some amendments based on the comments and other concerns.

Changes to Proposed Regulations

One commenter suggested extensive changes to Rule 903 (38 CFR 20.903), relating to notification of evidence secured and law to be considered by the Board and opportunity for response. While we decline to follow all of the suggestions, we have amended Rule 903 to clarify that the appellant may, within the 60-day period, submit evidence and argument relating to the evidence or law. Proposed Rule 1304(b)(2) (38 CFR 20.1304(b)) implicitly provided the right to submit evidence and argument in connection with the Board's consideration of evidence or law not previously considered by the agency of original jurisdiction.

We decline to adopt the commenter's suggestion that the Board's notice include a statement of the weight the Board intends to assign to new evidence or law, an assessment of whether the evidence or law is "determinative, significant or of minimal impact," a statement of whether the new evidence or law will likely result in the denial of the appeal, and a list of the claimant's options. These matters are generally not determined until the Board weighs the evidence and decides the appeal. The purpose of our amendments to § 20.903 is to ensure that an appellant receives adequate notice of new evidence obtained by the Board and of law that the Board intends to consider, as well as an opportunity to respond with additional evidence or argument; the purpose is not to give an appellant advance notice of the decision the Board intends to make in an appeal. Our purpose is adequately served by providing the appellant with a copy of the evidence obtained by the Board, a copy or summary of the law to be considered, and an opportunity to submit relevant evidence or argument in response.

Another commenter suggested that, in connection with the Board's consideration of law not already considered by the agency of original jurisdiction, we should provide a copy or summary of the law, rather than a copy or "reference" to the law. We think this is a good suggestion and have incorporated it into Rule 903(c).

The same commenter suggested that, when the Board secures evidence not provided by the appellant, the Board should provide a copy of that evidence to the appellant. Because that was our intent, we have clarified Rule 903(b) to make it explicit.

Further, that commenter asserted that the record development procedures in 38 CFR 19.9 lack provisions to make this record development comply with the notice and other requirements of the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. 106–475, 114 Stat. 2096. We agree and have amended proposed § 19.9(a)(2) to clarify that any development undertaken by the Board will comply with 38 CFR 3.159(a) and (c)–(f), which implements the VCAA. Those provisions delineate the obligations of VA and the claimant with respect to obtaining evidence. Section 3.159(b) relates to notices VA must give when it receives a substantially complete or incomplete application. Because that notice is normally given in the earliest stages of claim processing, even before evidence gathering begins, § 3.159(b) was designed for implementation by regional offices. Application of those provisions to the Board would be inapt. Nevertheless, because under § 19.9(a)(2) the Board could provide the notice, we have made other amendments to § 19.9(a)(2) to provide the same protections afforded by the VCAA.

We have added a provision (38 CFR 19.9(a)(2)(ii)) to ensure two things: First, if the Board undertakes to provide the notice required by 38 U.S.C. 5103(a) and/or 38 CFR 3.159(b)(1), the appellant shall have not less than 30 days in which to respond to that notice. Second, because 38 U.S.C. 5103(b) appears to give the claimant one year to provide the evidence requested of the claimant in the notice, we have clarified that, if the appellant submits relevant evidence within one year of the notice but after the Board's decision, the evidence will be referred to the agency of original jurisdiction. If that agency makes a favorable determination based on that evidence, the effective date of the determination will be the same as if the Board had granted the appeal. This latter rule is based on Rule 1304(b)(1), which relates to evidence submitted to the Board before its decision, but not accepted in connection with the appeal.

We have modified Rule 903(c) to make explicit that, in two situations, the Board need not notify the appellant that it intends to consider a law not considered by the regional office: (1) If the Board intends to grant the benefit; or (2) if the appellant or the appellant's representative has advanced or otherwise argued consideration of the law in question. If the Board intends to grant the benefit, there is no need to delay the claim with notice. Similarly, if the appellant has raised the applicability of a law, then he or she has already been heard with respect to the law, and Rule 903(c)'s purpose has been satisfied. Accordingly, there would be no need to go through these notice procedures in either of these situations.

We have also corrected an erroneous reference in proposed § 20.903(b).

Alternative Approach

One commenter suggested an alternative approach. Under this approach, if a case requires additional evidence, a Board member would prepare a memorandum listing such evidence. Personnel from the Veterans Benefits Administration (VBA), the part of VA that operates the regional offices, would be temporarily assigned to the Board and would complete the required development. When the development was completed, the appellant would be given the choice, as under prior regulatory procedures, of having the Board decide the case or first having the regional office make another decision, based on the additional evidence.

The chief efficiency in this approach would probably be that experienced VBA personnel would be developing the evidence, rather than the Board, which has essentially no experience in such matters. On the other hand, the approach would not eliminate remands to the regional offices to decide a claim based on new evidence, since the appellant could decline to waive initial regional office consideration.

While we appreciate this thoughtful suggestion, we do not believe that it

would do as much to relieve pressure on the regional offices.

Hearings

One commenter suggested that the Board's rules should provide a right to a hearing when the Board is considering new evidence. While we understand the concern motivating this suggestion, we think that Rule 1304(b), which permits a hearing upon a showing of good cause, is sufficient to protect the appellant's right to due process.

First, there should be no question that these regulations provide substantial due process protections when the Board develops new evidence: We have amended 38 CFR 20.903(b) to provide that, if the Board obtains pertinent evidence not submitted by the appellant, the Board will provide the appellant a copy of the evidence and 60 days to submit additional evidence or argument in response.

Second, evidence submitted after an appeal is transferred to the Board is not a new situation. The Board has dealt with it for many years. *Compare* 38 CFR 20.709 (2001) (procurement of additional evidence following a hearing) *with* 38 CFR 19.164 (1983) (same), *published in* 48 FR 6961 (1983); *also compare* 38 CFR 20.1304(b) (evidence submitted after certification and transfer) *with* 38 CFR 19.174 (1983) (same), *published in* 48 FR 6961 (1983). While in the past, Board consideration in the first instance required the appellant to waive initial consideration by the regional office, 38 CFR 20.1304(c) (2001), a hearing would have been available—and is still available—upon a showing of good cause, *id.* 20.1304(b).

We think this time-tested approach will adequately serve the interests of veterans both in being heard and in receiving a prompt decision on appeal. In sum, we believe we are protecting the important due process rights of all appellants.

Objections

The veterans service organizations and the association of attorneys opposed the proposed rule. In general, their reasons for opposition fell into four categories: (1) Procedural issues relating to the rulemaking; (2) alleged legal barriers to implementation of the proposed rules; (3) alleged conflicts with the VCAA; and (4) policy issues which allegedly make adoption of the rule unwise. In addition, one commenter raised questions concerning the effective date of these rules.

We do not agree with these objections. We will address them in turn.

1. Procedural Issues

One commenter felt the 30-day comment period was too short and suggested that, in connection with publication of the final rule, we announce another 30-day comment period. We decline to do so.

As we explained in our NPRM, 66 FR at 40944, we chose a 30-day comment period because of the exigent nature of the backlog of claims at our regional offices. We received thoughtful comments from a number of commenters. While we are always interested in comments from the public relating to our rules, we do not see any particular interest that would be served by reopening the comment period.

2. Legal Barriers to Regulations

Several commenters suggested that provisions of the proposed rule conflict with general legal principles or particular statutes that would prevent the rule's adoption.

a. The Board's Status as an Appellate Body Prevents it From Developing Evidence

Three commenters asserted that the Board does not have the authority to develop evidence because it is an appellate tribunal and hence limited to review of the record below. We have examined the applicable statutes and court decisions interpreting them. We do not agree that the nature of the Board's administrative appellate review excludes the possibility of securing and ruling on evidence or ruling on issues of law that were not decided by the agency of original jurisdiction.

As a general matter, an agency's administrative appellate body has all the power the agency has in the initial decision process—in VA's case, the process at the regional offices—and the power to receive additional or supplemental evidence. 2 Am. Jur. 2d *Administrative Law* §§ 372, 375 (2000). Other agencies have issued regulations authorizing their administrative appellate bodies to secure and review new evidence. *See* 42 CFR 404.976(b)(2) (in appeals from decisions of Social Security Administration administrative law judges, Appeals Council has authority to obtain additional evidence if needed); 29 CFR 1614.404(a) (in appeals from decisions of administrative judges, the Equal Employment Opportunity Commission may supplement the record by investigation or other procedures); *see also Chrysler Corp.* v. *Federal Trade Comm'n*, 561 F.2d 357, 362–63 (1977) (on appeal from initial decision, FTC could supplement record with evidence it obtained). Because the statutes governing the Board do not withhold the power to receive additional evidence, which is generally held by administrative appellate bodies, we believe the Board also holds that power.

Moreover, in our view, VA's statutory scheme supports the Board's development of evidence. For example, the United States Court of Appeals for Veterans Claims (CAVC) has held that 38 U.S.C. 7109, which authorizes the Board to obtain expert medical opinions from outside VA, is an enabling provision which supplements the Board's inherent authority to secure medical opinions from within VA. *Winsett* v. *West*, 11 Vet. App. 420, 426 (1998) (Board has the authority, and in many cases the duty, to obtain an expert medical opinion irrespective of section 7109), *aff'd*, 217 F.3d 854 (Fed. Cir. 1999) (unpublished opinion). Furthermore, the CAVC has indicated that evidentiary development by the Board is consistent with statutory authority also suggestive of a Board fact-finding role. *Austin* v. *Brown*, 6 Vet. App. 547, 551 (1994); *see also Gilbert* v. *Derwinski*, 1 Vet. App. 49, 52 (1990) (Board is an administrative tribunal which functions as a fact finder in a manner similar to that of a trial court, although, for the most part, in a non-adversarial setting).

To support its assertion that the Board's status as an appellate body prevents the Board from developing evidence, one commenter cited a number of cases, including *Nolen* v. *Gober*, 222 F.3d 1356 (Fed. Cir. 2000); *Winters* v. *Gober*, 219 F.3d 1375 (Fed. Cir. 2000); *Hensley* v. *West*, 212 F.3d 1255 (Fed. Cir. 2000); *Smith* v. *Brown*, 35 F.3d 1516 (Fed. Cir. 1994); and *McCormick* v. *Gober*, 14 Vet. App. 39 (2000). We have reviewed those cases. While some of them deal with the nature of review by the CAVC, none of them stands for the proposition—or even implies the proposition—that the Board cannot develop evidence.

With respect to the Board applying law not considered by the regional office, the CAVC has never held that the Board is barred from such consideration, only that the appellant must be given notice and the opportunity to submit evidence and argument on that point. *e.g.*, *Sutton* v. *Brown*, 9 Vet. App. 553, 564–67 (1994). Our amendment to Rule 903 meets this standard.

Accordingly, we conclude that the Board's status as an appellate body does not bar it from developing evidence or considering law not considered by the regional office.

b. Statutes Prohibit the Board From Developing Evidence or Curing Procedural Defects

Several commenters asserted that various statutes, 38 U.S.C. 511, 7101, 7104, 7105, and 7105A, prohibit the Board from developing evidence. We have carefully reviewed those statutes. We find nothing in any of them prohibiting or precluding the Board from developing evidence.

One commenter referred extensively to what various statutes "contemplated." For example, this commenter stated that 38 U.S.C. 7104(a) "does not contemplate that the Board is to cure procedural defects." This is the text of that statute:

> All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

Nothing in the statute refers to procedural defects, much less to curing them. The commenter provided no authority for its conclusion. Because we disagree with the commenters that any statute prohibits or precludes the Board from engaging in the activities mentioned in the proposed rule, we decline to make any change based on these comments.

That same commenter asserted that VA had never before interpreted 38 U.S.C. 7104(a) to authorize the Board to obtain evidence or cure procedural defects. While that may be true, the Board has long been authorized by statute to collect evidence in connection with a hearing, 38 U.S.C. 7107(b), and in connection with a request for independent medical opinions, *id.* 7109. Further, the commenter ignores the fact that the substance of Rule 901(a) (38 CFR 20.901(a)), relating to Board requests for medical opinions from VA's Under Secretary for Health (formerly the Chief Medical Director), has been in the Board's published rules of practice for more than 35 years. *See* 38 CFR 19.144 (1965) (expert medical opinions), *published in* 29 FR 1464, 1468 (1964). The commenter also fails to consider the Board's ability to cure some procedural defects, e.g., clarification of the issues on appeal or whether the appellant wants a hearing before the Board, without remand, which has been in the Board's appeals regulations since 1996. *See* 38 CFR 19.9(a). Regardless of whether VA has previously interpreted section 7104(a) to permit the Board to obtain evidence and cure procedural defects, that interpretation is consistent with all governing statutes.

Accordingly, we do not accept the proposition that statutes in title 38, United States Code, bar the Board from obtaining evidence or curing procedural defects.

c. Statutes Require Waiver of Consideration by the Regional Office When Evidence is Developed by the Board

One commenter asserted that the proposed amendment to 38 CFR 20.1304, which would allow the Board to consider evidence that it obtains or that is submitted to it, without having to refer the evidence to the agency of original jurisdiction for initial consideration in the absence of the appellant's waiver, is inconsistent with the statutory language of 38 U.S.C. 7104(a), 7105(a), 7109(a), and 7109(c). This commenter offered no authority for this proposition, other than to assert that, (1) as an appellate body, the Board is limited to the record before the Secretary, and (2) the amendment represents a change.

As discussed above, we think administrative appellate bodies generally are not limited to the evidence developed below, and that the Board in particular is not so limited. With respect to the comment that these amendments represent a change in policy, we agree. However, VA has the right to amend its regulations as long as the amendments do not conflict with statutes. We have carefully reviewed the cited statutes, and find nothing in them that would prohibit or preclude the change. Accordingly, we reject this objection.

Another commenter argued that 38 U.S.C. 7101 and 7104 prevent the Board from generating determinations which have not been subject to prior agency adjudication and review. The commenter offers no other authority for this proposition. We have reviewed those provisions carefully and find in their text no support for the commenter's argument. We reject this argument.

The same commenter argued that, by considering laws not considered by the regional office, the Board would unlawfully relieve the regional office of its obligation to follow all applicable statutes and regulations. The argument appears to be this: If the Board considers a law not considered by the regional office and decides the case without remand, it will have sanctioned the regional office's failure to consider the law.

The only authority the commenter offers for this proposition is a case which reiterates the axiom that agencies must act in accordance with applicable statutes and regulations. *Paralyzed Veterans of America* v. *West,* 136 F.3d 1434, 1436 (Fed. Cir. 1998). That axiom provides no support for the proposition that an administrative tribunal has no authority to apply law not applied by an inferior tribunal. If a regional office has failed to consider an applicable law, it is important that the law be considered in connection with the claim, but whether the consideration is made by the Board in the first instance or by the regional office on remand from the Board is not important. The Board's functions include correction of errors by the regional offices. For the reasons stated in the NPRM, we have decided to have the Board make such consideration in the first instance. We therefore reject the commenter's argument.

3. Conflicts With the VCAA

a. The Board Has No Jurisdiction To Implement the VCAA

Two commenters asserted that any evidence development by VA requires application of the VCAA and that, because the Board has no authority to implement that Act, the Board cannot develop evidence. The only argument advanced in support of this proposition is that the VCAA specifies that the Secretary provide assistance but does not mention the Board.

The VCAA requires the Secretary of Veterans Affairs to provide certain types of assistance in connection with a claim for benefits. By statute, the Board stands in place of the Secretary in connection with appeals. 38 U.S.C. 7104(a). Even if we were to associate some significance with the fact that the VCAA does not mention the Board—which, since it also does not mention agencies of original jurisdiction, we do not—the Secretary can delegate his VCAA obligations, which he is doing by publishing this regulation. Therefore, we reject this argument.

b. The Regulation's 60-Day Time Periods for Response Conflict With the One-year Time Period Set Forth in the VCAA

One commenter, without specifying any statutory or regulatory provisions other than "the VCAA," asserted that an appellant is always entitled to a one-year response period because of the VCAA. We do not agree.

New Rule 903, relating to notification of evidence secured and law to be considered by the Board and opportunity for response, provides a 60-day response period. The VCAA does not prohibit or preclude such a period.

The only one-year period provided by the VCAA is mentioned in 38 U.S.C. 5103(b). Under 38 U.S.C. 5103(a), when VA receives a substantially complete application for benefits, it must notify the claimant of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. In the case of information or evidence that VA tells the claimant he or she must provide, section 5103(b)(1) provides that, if such information or evidence is not received by VA within one year from the date of the notification, no benefit may be paid or furnished by reason of the claimant's application.

This one-year period in the VCAA is expressly applicable to information and evidence requested from a claimant in VA's notification in response to receiving a substantially complete application. The limitation in section 5103(b)(1) simply does not apply to an appellant's opportunity to respond to an opinion, evidence, or law, as set forth in new Rule 903.

We therefore reject this argument.

4. Policy Issues

Several commenters raised questions as to whether this increased authority for the Board made sense from a policy perspective.

a. Quality Problems at the Regional Offices

Three commenters were concerned that, to the extent these regulations curtailed the Board's remand function, the quality of regional office determinations would suffer. As one commenter stated:

> Appellate review is a quality control function. The goal (and perhaps intensity) of quality review is lost if the quality reviewer must itself correct the mistakes it finds. If the Board must correct the mistakes of the agency of original jurisdiction, the agency of original jurisdiction has no incentive to improve performance, and without having to ever acknowledge and correct its own mistakes, the agency of original jurisdiction is deprived of the means to learn from them.

We are sensitive to these concerns. However, a remand does not always connote error on the part of the regional office. For example, during the period October 2000 through March 2001, more than 27% of the Board's remands were based primarily on the need for the regional office to apply law which was not in effect at the time of the original decision. Similarly, during the period October 1998 through March 2001, between 5% and 10% of the Board's remands were based primarily on the appellant's request for a Board hearing at the regional office, which may have been submitted subsequent to the filing of the appeal. In any event, we believe that VBA's quality-review programs will solve any perceived problem with quality.

b. Inefficient Use of Resources

One commenter opposed the regulations in part because they would foster inefficient use of resources. Specifically, this commenter argued that Board employees possess a higher level of expertise than regional office employees, and that that higher expertise should be used where most appropriate, i.e., in reviewing regional office decisions, not in duplicating the regional offices' work.

As described in our NPRM, VA is now concerned with the very large backlog at the regional offices. At the end of August 2001, there were 367,000 original and reopened claims for service-connected disability compensation pending in VA's regional offices, double the number pending at the end of August 2000. Of the August 2001 cases, 40% (146,000 of 367,000) had been pending for more than 180 days, and 11% had been pending for more than a year (40,000 of 367,000). (The corresponding percentages in August 2000 were 28% and 8%, respectively.) We think employing the Board to help develop appealed claims will take pressure off the regional offices so that they can deal with these pending claims.

c. If Board Applies New Law, Claims Will Be Denied

One commenter argued that, if the Board decides a case based on law not applied by the regional office, the Board will deny the appeal because of inadequately developed records. The argument is essentially that the Board will consider the new law without providing the appellant an opportunity to submit evidence or argument.

The commenter does not take into account new Rule 903(c), which provides for notice to the claimant that the Board intends to consider such law and provides 60 days for a response. This approach is consistent with the CAVC's holding in *Sutton, supra,* and provides the appellant with an opportunity to present evidence and argument.

In addition, we have modified all three paragraphs in Rule 903 to clarify that the appellant may submit evidence and/or argument in response to the Board's notice.

d. Issues Relating to the Supplemental Statement of the Case

Two commenters raised questions relating to supplemental statements of the case (SSOC).

Generally, after a claimant files a notice of disagreement with a regional office decision, the regional office must prepare what the law calls a "statement of the case" (SOC). 38 U.S.C. 7105(d). An SOC includes a summary of pertinent evidence in the case, a citation to pertinent laws and regulations, a discussion of how those laws and regulations affect the decision, and a summary of the reasons for the decision. *Id.* 7105(d)(1)(A)–(C).

VA's regulations require the regional office to prepare an SSOC if the regional office receives additional pertinent evidence or the SOC is otherwise inadequate, such as where the regional office must apply new law in a case and the subsequent decision does not grant the benefits sought. 38 CFR 19.31. An SSOC is a document prepared by the regional office to inform the appellant of any material changes in, or additions to, the information included in the SOC or any prior SSOC.

One commenter appeared to assume that the Board would issue an SSOC if it considers new evidence or new law. It will not. The purpose of the SSOC is to provide the claimant with the reasons for the regional office decision so that the claimant can make an informed decision on whether to continue the appeal to the Board. Once a regional office transfers an appeal to the Board, this stage of the appeal is passed and there no longer is a need for an SSOC.

One commenter asserted that the Board's failure to provide an SSOC would eliminate a "substantive due process right" of the claimant. As discussed above, once an appeal has reached the Board, there is no reason to provide an SSOC, so no right is being eliminated.

We reject these arguments.

5. Effective Date

One commenter asserted that the new rules cannot apply to appeals pending on the date the rules become effective. Accordingly, it objected to our proposal that the amendments apply to appeals for which the notice of disagreement was filed on or after the effective date of these amendments and to appeals that were pending on that date. 66 FR at 40944.

As this commenter argues, retroactivity is not favored in regulations. *Bowen* v. *Georgetown Univ. Hospital,* 488 U.S. 204, 208 (1988). However, the effective date provisions in this rule do not make it retroactive.

The fact that a regulation applies to pending matters does not make it retroactive. As the Supreme Court has said, a statute has retroactive effect if it "impairs rights a party possessed when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 280 (1994). And as the Federal Circuit has said, "an effective date, unless expressly conditioned on other events, governs the application of a new rule." *Schockley* v. *Arcan, Inc.*, 248 F.3d 1349, 1358–59 (Fed. Cir. 2001) (where reissue patent was pending when new rule took effect, the new rule applies); *cf. Demars* v. *First Service Bank for Savings*, 907 F.2d 1237, 1239–40 (1st Cir. 1990) (where substantive rights are not affected and there is no manifest injustice, new regulatory provisions apply to pending cases).

Under the new regulations, according to the commenter, appellants will lose their "rights" to have regional offices secure evidence and to have the regional offices adjudicate claims under laws those offices did not previously consider. In our view, which office within VA that will attempt to obtain evidence on behalf of a claimant or which office will adjudicate the effect of a law not previously considered are procedural matters. The appellant's rights to submit evidence and argument, as well as the right to have his or her regional office denial reviewed by the Board, are unabridged by these amendments.

Accordingly, we believe that it is proper to apply these rules to all pending appeals.

We do note, however, that these rules in no way abridge the appellant's right, under *Stegall* v. *West*, 11 Vet. App. 268, 271 (1998), to have VA comply with all remand orders, whether from the CAVC or from the Board. Accordingly, with respect to cases remanded by the Board, whether before or after the effective date of these amendments, VA's regional offices will continue to execute the remand orders, as well as prepare a SSOC when appropriate.

Paperwork Reduction Act

All collections under the Paperwork Reduction Act (44 U.S.C. 3501–3520) referenced in this document have existing Office of Management and Budget approval. This document makes no changes to those collections of information other than to change which VA component collects the information. Under this rule, the Board would collect some information currently collected by VA regional offices.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 14, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, 38 CFR parts 19 and 20 are amended as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is revised to read as follows:

§ 19.9 Further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Board Member or panel of Members may:

(1) Remand the case to the agency of original jurisdiction, specifying the action to be undertaken; or

(2) Direct Board personnel to undertake the action essential for a proper appellate decision.

(i) Any such action shall comply with the provisions of § 3.159(a) and (c)-(f) of this chapter (relating to VA's assistance to claimants in developing claims).

(ii) If the Board undertakes to provide the notice required by 38 U.S.C. 5103(a) and/or § 3.159(b)(1) of this chapter, the appellant shall have not less than 30 days to respond to the notice. If, following the notice, the Board denies a benefit sought in the pending appeal and the appellant submits relevant evidence after the Board's decision but before the expiration of one year following the notice, that evidence shall be referred to the agency of original jurisdiction. If any evidence so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the award's effective date will be the same as if the Board had granted the benefit in the appeal pending when the notice was provided.

(b) *Examples.* A remand to the agency of original jurisdiction is not necessary:

(1) To clarify a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, and requests for a hearing before the Board; or

(2) For the Board to consider an appeal in light of law, including but not limited to statute, regulation, or court decision, not already considered by the agency of original jurisdiction.

(c) *Scope.* This section does not apply to:

(1) The Board's request for an opinion under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with a recognized medical treatise; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a)).

3. Section 19.31 is revised to read as follows:

§ 19.31 Supplemental statement of the case.

(a) *Purpose and limitations.* A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) *When furnished.* The agency of original jurisdiction will furnish the

appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) *Pursuant to remand from the Board.* The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(Authority: 38 U.S.C. 7105(d)).

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

4. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

5. Section 20.903 is revised to read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) *If the Board obtains a legal or medical opinion.* If the Board requests an opinion pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(b) *If the Board obtains other evidence.* If, pursuant to § 19.9(a) or § 19.37(b) of this chapter, the Board obtains pertinent evidence that was not submitted by the appellant or the appellant's representative, the Board will notify the appellant and his or her representative, if any, of the evidence obtained by furnishing a copy of such evidence. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter or memorandum that accompanies the notice for purposes of determining whether a response was timely filed.

(c) *If the Board considers law not already considered by the agency of original jurisdiction.* If the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. The notice from the Board will contain a copy or summary of the law to be considered. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter that accompanies the notice for purposes of determining whether a response was timely filed. No notice is required under this paragraph if the Board intends to grant the benefit being sought or if the appellant or the appellant's representative has advanced or otherwise argued the applicability of the law in question.

(Authority: 38 U.S.C. 7104(a), 7109(c)).

Subpart N—Miscellaneous

6. Section 20.1304 is amended by:

a. Revising the last sentence in paragraph (a);

b. Revising paragraph (b);

c. Removing paragraph (c); and

d. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) * * * Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence*—(1) *General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(i) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or

additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(ii) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(2) *If the Board obtains evidence or considers law not considered by the agency of original jurisdiction.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (b) or (c) of Rule 903 (paragraph (b) or (c) of § 20.903 of this part).

* * * * *

(Authority: 38 U.S.C. 7104, 7105, 7105A).

[FR Doc. 02–1536 Filed 1–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL –7126–3]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Idaho Department of Environmental Quality

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) approves the Idaho Department of Environmental Quality's (IDEQ) request for program approval and delegation of authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAPs) as they apply to major sources in Idaho required to obtain an operating permit under Title V of the federal Clean Air Act (CAA or Act). Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that Idaho State law, regulations, and resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for straight delegation common to all approval options, and in applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for Title V sources, also referred to as "major sources." Although EPA will look to IDEQ as the lead for implementing the NESHAPs delegated to IDEQ at major sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-Title V sources by-way-of a streamlined request and approval process, described below.

Concurrent with this direct final rule, EPA is publishing a proposed rule in today's **Federal Register**. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the 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: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives adverse comment by February 22, 2002. If adverse comment is received, EPA 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 submitted to the address below:

Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1172.

Copies of delegation requests and other supporting documentation are available for public inspection at US EPA, Region 10 office during normal business hours. Please contact Tracy Oliver to make an appointment.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1172.

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Purpose

Hazardous air pollutants are defined in the Act as pollutants that present or may present the threat of adverse human health effects through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" and are listed in section 112(b)(1) of the Act. National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of section 112 of the Act. These standards, found in 40 CFR Parts 61 and 63, constitute the Federal Air Toxics Program.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these entities can accept delegation of authority for implementation and enforcement. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

On June 18, 2001, IDEQ requested program approval and delegation of authority to implement and enforce certain NESHAPs as they apply to "major sources" [1] required to obtain an operating permit under Title V of the Act. A "major source" of hazardous air pollutants is defined in the Act as any stationary source—or group of stationary sources in a contiguous area and under common control—that emit, or have the potential to emit: (1) 10 tons per year or more of any hazardous air pollutant; or (2) 25 tons or more of any combination of hazardous air pollutants.

Pursuant to the authority of section 112(l) of the Act, EPA is approving IDEQ's NESHAP program and delegating authority to implement and enforce certain NESHAPs adopted unchanged into state law, as they apply to major sources. The purpose of this action is to acknowledge IDEQ's ability to implement and enforce a NESHAP program and to transfer primary responsibility from EPA to IDEQ for certain NESHAPs as they apply to Title V sources. Although EPA will look to IDEQ as the lead to implement and enforce delegated NESHAPs at Title V sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for these sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With today's NESHAP program approval, IDEQ may update its delegation status in the future by way of a streamlined process. This will simplify the delegation of additional, newly promulgated, or revised standards as they apply to Title V sources, as well as non-Title V sources.

a. What Are the Requirements for NESHAP Delegation?

EPA may delegate authority for NESHAPs if the requesting agency is able to satisfy requirements of 40 CFR 63.91(b), including the ability to demonstrate:

(1) The state or local program is not less stringent than the corresponding federal program or rule;

(2) The state or local has adequate authority and resources to implement and enforce the program;

(3) The schedule for compliance is sufficiently expeditious;

(4) The program is otherwise in compliance with federal guidance.

Once approval is granted, the agency's air toxics program can be implemented and enforced by the requesting agency. EPA also retains enforcement authority.

If—as in this case—an agency with an approved operating permit program under Title V of the Act is requesting NESHAP delegation for major sources only, it is presumed that they already meet section 112(l) delegation requirements for major sources. This is because the authority and enforcement requirements for Part 70 program approval are equivalent to the authority and enforcement requirements for section 112(l) delegation found in 40 CFR 63.91(d). And, the approval of a Title V program already confers the responsibility to implement and enforce all requirements applicable to sources subject to the Title V program, including section 112.

In addition to meeting the delegation criteria implicit in Title V program approval, IDEQ has submitted documents to demonstrate it satisfies 40 CFR 63.91(d) approval requirements for delegation for all sources. Because IDEQ has satisfied these requirements, it will only need to reference this demonstration and reaffirm that it continues to meet these criteria if it asks for delegation of new and updated standards, or requests broader applicability of its delegation to include non-Title V sources. These changes can be made in IDEQ's delegation status by-way-of a streamlined request and approval process, described below.

b. What Is the History of This Delegation?

On September 15, 1995, IDEQ requested delegation of authority to implement and enforce specific NESHAP regulations that IDEQ had adopted unchanged into Idaho law as they apply to major sources. On December 14, 1995, IDEQ also requested approval of its mechanism for receiving automatic delegation of future NESHAP standards, as promulgated.

On June 17, 1995, EPA proposed interim approval of IDEQ's request for delegation under section 112(l) of the Act and requested public comment on the action. EPA also proposed approval of a mechanism for IDEQ to receive delegation of future NESHAPs. (*See* 61 FR 30570) No comments were received on EPA's proposed action, and on December 6, 1996, EPA promulgated final interim approval of the delegation. (*See* 61 FR 64622) EPA granted interim rather than full approval because it determined that IDEQ's enforcement authorities substantially, but not fully, met the requirements of 40 CFR 70.11.

In granting Idaho interim approval of its NESHAPs program for major sources, EPA delegated authority for implementing and enforcing the following NESHAPs as they applied to Title V sources: (1) 40 CFR Part 61, subparts A, C, D, E, F, J, L through P, V, Y, BB, and FF; and (2) 40 CFR Part 63, subparts A, D, L, and M. EPA granted interim approval of a streamlined mechanism for receiving future delegation of NESHAPs which were adopted unchanged into Idaho law and as they applied to Title V sources.

On July 9, 1998, May 25, 1999, and March 15, 2001, the State of Idaho submitted to EPA materials addressing the Part 70 enforcement authority issues which had previously prevented full approval of its Title V program and NESHAP delegation, as well as all other issues that previously precluded full approval of Idaho's Title V program. These submittals requested full approval of Idaho's air operating permits program, transmitted the State's revised Title V statutes and rules, and discussed changes made to the State's operating permits program since interim approval was granted.

Based on EPA's review of the Title V program revisions submitted by the State of Idaho, EPA proposed full approval of Idaho's operating permits program on August 13, 2001. EPA determined that the State corrected the deficiencies and requested public comments on the proposed action. (*See* 66 FR 42490) On October 4, 2001, EPA promulgated final approval of Idaho's Title V program. (*See* 66 FR 50574)

On June 18, 2001, IDEQ requested final full delegation of authority for specific NESHAPs as they apply to Title V sources. This request was for delegation of Part 61 and 63 subparts in effect on July 1, 2000 and adopted unchanged into Idaho rules on March 30, 2001.

c. How Has IDEQ Satisfied the Requirements for NESHAP Delegation?

40 CFR 63.91 contains requirements that an Agency must meet for NESHAP delegation. If this request is for authority to implement and enforce the standards for all sources, the agency must demonstrate that it has adequate

[1] For the purposes of this action: (1) A source that is required to obtain an operating permit under Title V of the federal Clean Air Act may be considered a "major source," as defined in 40 CFR Part 70.2; (2) "Title V source" and "major source" may be considered equivalent; and (3) "Title V program" and "Part 70 permit program" may be considered equivalent.

enforcement authority, legal authority, resources, and schedule for expeditious compliance. If the State already has an approved Title V program and the request is for Title V sources only, it is presumed that they have already met the requirements needed to implement and enforce NESHAPs for these sources.

Idaho's Title V approval was promulgated as an interim approval in 1997 because EPA determined that Idaho's authorities did not meet all of the requirements in 40 CFR part 70. Its request for NESHAP delegation also received interim approval because EPA determined that Idaho's enforcement authorities did not meet all of the requirements in 40 CFR 70.11, as required by 40 CFR 63.91(5)(6).

In the **Federal Register** notice that granted interim approval, EPA outlined several changes Idaho needed to make before it could receive final approval. The three changes that affected NESHAP delegation pertained to maximum criminal penalties, false statements and tampering, and the environmental audit statute. (*See* 61 FR 62622) These issues were all adequately addressed by Idaho in their subsequent Title V program application, which was approved by EPA. (*See* 66 FR 42490 and 66 FR 50574).

IDEQ has shown by way of Title V program approval, that IDEQ has adequate statutes, rules, authority, and program capacity to: (1) meet the requirements of Part 70.11 to address violations; (2) request information from regulated sources regarding compliance status; and (3) inspect sources and records to determine compliance status. These requirements of Title V are also requirements for section 112(l) delegation. Also, as a condition of its Title V program approval, EPA has determined that IDEQ has the ability to implement and enforce all applicable requirements for sources subject to the part 70 permit program, including section 112 requirements. As a result, EPA finds that IDEQ meets the requirements for NESHAP delegation for major sources. (*See* 40 CFR 63.91(d)(3))

With regard to program approval, in addition to demonstrating the enforcement authorities described above, Idaho met the following criteria for approval listed in 63.91(b):

(1) A copy of state statutes, regulations, and requirements that grant authority to implement a NESHAP program upon approval;

(2) a demonstration that the agency has the capacity to implement a NESHAP program, supported by a description of their program, a description of the implementing agency (including such things as budget and staffing);

(3) a schedule demonstrating expeditious implementation upon approval;

(4) a plan that ensures expeditious compliance by all sources subject to the delegated standards upon approval.

All of these requirements were met with IDEQ's submittal. These documents are available for public review and inspection at the address listed above.

II. EPA Action

a. What Specific Emission Standards Is EPA Delegating to IDEQ?

EPA is delegating certain part 61 and 63 Subparts to IDEQ based on its ability to carry out implementation and enforcement responsibilities for Title V sources subject to these standards. The following subparts—also summarized in the part 61 and 63 tables at the end of this rule—are delegated: (1) 40 CFR part 61 Subparts A, C, D, E, F, J, L, M, N, O, P, T, V, Y, and BB in effect July 1, 2000; (2) 40 CFR part 63 Subparts A, D, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, HH, EE, GG, II, JJ, KK, LL, OO, PP, QQ, RR, TT, UU, VV, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, and XXX in effect July 1, 2000.

b. What Specific Standards Does EPA Not Delegate?

EPA does not delegate all the 40 CFR part 61 subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA is not delegating several 40 CFR part 61 subparts pertaining to radon or radionuclides which include: subparts B, Q, H, I, K, R, and W. EPA has determined that there are either no sources in Idaho (and that no new sources are likely to emerge), or if there are sources, the IDEQ does not have sufficient expertise to implement these NESHAPs.

Additionally, EPA is not delegating the regulations that implement CAA sections 112(g) and 112(j), codified at 40 CFR part 63, Subpart B, to IDEQ. EPA has determined that Subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*See* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the Title V permit process as the primary vehicle for establishing requirements" (*See* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) of the Act do not need approval under section 112(l).

c. What General Provisions Authorities Are Automatically Granted as Part of Idaho's Title V Operating Permits Program Approval?

Certain General Provisions authorities are automatically granted to IDEQ as part of its part 70 operating permits program approval. These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction." [2] Additionally, for 40 CFR 63.6(i)(1), IDEQ does not need to have been delegated a particular standard or have issued a part 70 operating permit for a particular source to grant that source a compliance extension. However, IDEQ must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

d. What General Provisions Authorities Is EPA Delegating in This Action?

In a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarified which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on this memo, EPA is delegating to IDEQ the part 63, subpart A, sections that are listed below.

[2] Sections 112(i)(1) and (3) state that "Extension of Compliance with Emission Standards" and "Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through Subpart E and, instead, is automatically granted to States as part of its Title V operating permits program approval provided the State has authority to implement those NESHAP standards in the Title V permit.

Delegation of these General Provisions authorities will enable IDEQ to carry out the EPA Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA grants IDEQ the authority to make decisions which are not likely to be nationally significant or alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, not on a source category-wide basis.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA DELEGATES TO IDEQ

Section	Authorities
63.1	Applicability Determinations
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors
63.7(e)(2)(iv) and (h)(2), (3)	Waiver of Performance Testing
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans
63.8(f)	Approval of Minor Alternatives to Monitoring
63.8(f)	Approval of Intermediate Alternatives to Monitoring
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports

In delegating 40 CFR 63.9 and 63.10, "Approval of Adjustments to Time Periods for Submitting Reports," IDEQ has the authority to approve adjustments to the timing of the reports that are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein will change that requirement.

e. What General Provisions Authorities Are Not Delegated?

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. The types of authorities that EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains sole authority to implement.[3]

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA CANNOT DELEGATE TO STATE AND LOCAL AGENCIES.

Section	Authorities
61.04(b)	Waiver of Recordkeeping
61.12(d)(1)	Approval of Alternative Means of Emission Limitation
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring
61.16	Availability of Information
61.53(c)(4)	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chlor-alki Plants
63.6(g)	Approval of Alternative Non-Opacity Emission Standards
63.6(h)(9)	Approval of Alternative Opacity Standard
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods
63.8(f)	Approval of Major Alternatives to Monitoring
63.10(f)	Waiver of Recordkeeping—all

[3] For authorities in 40 CFR parts 61 and 63 that are not addressed in this rulemaking and not otherwise identified as authorities that cannot be delegated, one may assume that they are delegated.

III. Implications

a. How Will This Delegation Affect the Regulated Community?

Once a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, IDEQ) becomes the primary point of contact with respect to that NESHAP. As a result of today's action, Title V sources in Idaho should direct questions and compliance issues to IDEQ.

For those authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR 61 and 63 that specifically indicates that authority may not be delegated—affected Title V sources should continue to work with EPA as their primary contact and submit materials directly to EPA for Administrator decision. In these specific cases, the delegated agency should be copied on all submittals, questions, and requests.

EPA continues to have primary responsibility to implement and enforce Federal regulations that do not have current state or local agency delegations. In this action, Idaho is receiving delegation for NESHAPs as they apply to Title V sources only. Therefore, EPA is the only agency that can implement and enforce NESHAPs as they apply to Idaho's area sources (non-Title V sources).

b. Where Will the Regulated Community Send Notifications and Reports?

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send copies to EPA. Sources should

continue to send to EPA—with a copy to IDEQ—notifications, reports, and requests required by authorities not delegated to IDEQ in this action.

c. How Will This Delegation Affect Indian Country?

This delegation to IDEQ to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because IDEQ has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

d. What Will Be IDEQ's Reporting Requirements to EPA?

In delegating the authority to implement and enforce these rules, EPA requires that IDEQ submit the following to EPA:

(1) IDEQ must input all minimum reportable requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for both point and area sources. IDEQ must enter the information into the AIRS/AFS system by September 30 of each year;

(2) IDEQ must report to EPA all reportable requirements for MACTRAX semiannually (MACTRAX provides the summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);

(3) IDEQ must also provide any additional compliance related information to EPA as agreed upon in the Compliance Assurance Agreement between EPA and IDEQ;

(4) IDEQ must submit to EPA copies of determinations issued pursuant to delegated General Provisions authorities, listed in Table 1 above;

(5) IDEQ must also forward to EPA copies of any notifications received pursuant to 40 CFR 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(6) IDEQ must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate, and minor alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

e. How Will IDEQ Receive Delegation of Future and Revised Standards?

IDEQ will receive delegation of future standards by the following process:

(1) IDEQ will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into Idaho regulations;

(2) EPA will send a letter of response back to IDEQ granting this delegation request (or explaining why EPA cannot grant the request);

(3) IDEQ does not need to send a response back to EPA;

(4) If EPA does not receive a negative response from IDEQ within 10 days of EPA's letter to IDEQ, then the delegation will be final 10 days after the date of the letter from EPA; and

(5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

f. How Frequently Should IDEQ Update Its Delegation?

IDEQ should update its incorporations by reference of 40 CFR parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated. Preferably, IDEQ should adopt federal regulations effective as of the most recent publication date of 40 CFR parts 61 and 63, which is July first of each year.

IV. Summary

EPA approves IDEQ's request for program approval and delegation of authority to implement and enforce specific NESHAPs as they apply to major sources required to obtain a part 70 operating permit in Idaho. Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that Idaho state law, regulations, and resources meet the requirements for program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for major sources. Although EPA will look to IDEQ as the lead for implementing delegated NESHAPs at major sources in Idaho, EPA retains authority under Section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-major sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-major sources by way of a streamlined process.

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send a copy to EPA. Sources should continue to send notifications, reports, requests, etc. pursuant to Authorities not delegated to Idaho to EPA for our action, and send a copy to IDEQ.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full delegation of NESHAP standards to IDEQ for major sources should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 22, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 25, 2002 and no further action will be taken on the proposed rule.

V. Administrative Requirements

a. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation 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 proposed regulation. EPA also may not issue a regulation 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 proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

c. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

d. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

e. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 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 annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

f. Submission to Congress and the Comptroller General

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

g. Petitions for Judicial Review

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 March 25, 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

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 13, 2001.

L. John Iani,

Regional Administrator, Region 10.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended by revising the table in paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10

Subpart	AK	ID	Oregon		Washington							
	ADEC[1]	IDEQ[2]	QDEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	QAPCA[8]	PSCAA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A. General Provisions[13]	X	X[2]			X	X	X	X	X	X	X	X
B. Radon from Underground Uranium Mines												
C. Beryllium		X[2]			X	X	X	X	X	X	X	X
D. Beryllium Rocket Motor Firing		X[2]			X	X	X	X	X	X	X	X
E. Mercury	X	X[2]			X	X	X	X	X	X	X	X
F. Vinyl Chloride		X[2]			X	X	X	X	X	X	X	X
H. Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I. Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J. Equipment Leaks of Benzene	X	X[2]			X	X	X	X	X	X	X	X
K. Radionuclides from Elemental Phosphorus Plants												
L. Benzene from Coke Recovery		X[2]			X	X	X	X	X	X	X	X
M. Asbestos	X[1]	X[2]			X[5]	X[6]	X	X[8]	X	X	X	X
N. Arsenic from Glass Plants		X[2]			X	X	X	X	X	X	X	X
O. Arsenic from Primary Copper Smelters		X[2]			X	X	X	X	X	X	X	X
P. Arsenic from Arsenic Production Facilities		X[2]			X	X	X	X	X	X	X	X
Q. Radon from Dept of Energy facilities												
R. Radon from Phosphogypsum Stacks												
T. Radon from Disposal of Uranium Mill Tailings		X[2]										
V. Equipment Leaks	X	X[2]			X	X	X	X	X	X	X	X
W. Radon from Operating Mill Tailings												
Y. Benzene from Benzene Storage Vessels	X	X[2]			X	X	X	X	X	X	X	X
BB. Benzene from Benzene Transfer Operations		X[2]			X	X	X	X	X	X	X	X
FF. Benzene Waste Operations	X				X	X	X	X	X	X	X	X

[1] Alaska Department of Environmental Conservation (1/18/97)
Note: Alaska received delegation for §61.145 and §61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in §61.145, as §61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.
[2] Idaho Department of Environmental Quality (7/1/00)
Note: Delegation of these Part 61 subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.
[3] Oregon Department of Environmental Quality
[4] Lane Regional Air Pollution Authority
[5] Washington Department of Ecology (7/1/00)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford)
[6] Benton Clean Air Authority (7/1/00)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, excluding Hanford.
[7] Northwest Air Pollution Authority (7/1/99)
[8] Olympic Air Pollution Control Authority (July 1, 2000)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act
[9] Puget Sound Clean Air Agency (7/1/99)
[10] Spokane County Air Pollution Control Authority (7/1/00)
[11] Southwest Air Pollution Control Authority (8/1/98)
[12] Yakima Regional Clean Air Authority (7/1/00)
[13] Authorities which are not delegated include: §§61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; §61.14(g)(1)(ii) for approval of major alternatives to monitoring; §61.16; §61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(12) to read as follows:

§ 63.99 Delegated federal authorities.

* * * * *

(a) * * *

(12) Idaho.

(i) The following table lists the specific part 63 subparts that have been delegated unchanged to the Idaho Department of Environmental Quality. The (X) symbol indicates that all or part of the subpart is delegated, subject to the conditions and limits in EPA's action:

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF IDAHO [1]

Subpart	IDEQ
A. General Provisions	X
D. Early Reductions	X
F. HON–SOCMI	X
G. HON-Process Vents	X
H. HON-Equipment Leaks	X
I. HON-Negotiated Leaks	X
L. Coke Oven Batteries	X
M. Perchloroethylene Dry Cleaning	X
N. Chromium Electroplating	X
O. Ethylene Oxide Sterilizers	X
Q. Industrial Process Cooling Towers	X
R. Gasoline Distribution	X
S. Pulp and Paper	X
T. Halogenated Solvent Cleaning	X
U. Polymers and Resins I	X
W. Polymers and Resins II—Epoxy	X
X. Secondary Lead Smelting	X
Y. Marine Tank Vessel Loading	X
AA. Phosphoric Acid Manufacturing Plants	X
BB. Phosphate Fertilizers Production Plants	X
CC. Petroleum Refineries	X
DD. Off-Site Waste and Recovery	X
EE. Magnetic Tape Manufacturing	X
GG. Aerospace Manufacturing & Rework	X
HH. Oil and Natural Gas Production Facilities	X
II. Shipbuilding and Ship Repair	X
JJ. Wood Furniture Manufacturing Operations	X
KK. Printing and Publishing Industry	X
LL. Primary Aluminum	X
OO. Tanks—Level 1	X
PP. Containers	X
QQ. Surface Impoundments	X
RR. Individual Drain Systems	X
SS. Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process	.....
TT. Equipment Leaks—Control Level 1	X
UU. Equipment Leaks—Control Level 2	X
VV. Oil-Water Separators and Organic-Water Separators	X
WW. Storage Vessels (Tanks)—Control Level 2	X
YY. Source Categories: Generic MACT	X
CCC. Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	X
DDD. Mineral Wool Production	X
EEE. Hazardous Waste Combustors	X
GGG. Pharmaceuticals Production	X
HHH. Natural Gas Transmission and Storage Facilities	X
III. Flexible Polyurethane Foam Production	X
JJJ. Polymers and Resins IV	X
LLL. Portland Cement Manufacturing	X
MMM. Pesticide Active Ingredient Production	X
NNN. Wool Fiberglass Manufacturing	X
OOO. Manufacture of Amino Phenolic Resins	X
PPP. Polyether Polyols Production	X
RRR. Secondary Aluminum Production	X
TTT. Primary Lead Smelting	X
VVV. Publicly Owned Treatment Works	X
XXX. Ferroalloys Production: Ferromanganese & Silicomanganese	X

[1] Delegation is for major sources only and subject to all federal law, regulations, policy and guidance.

(ii) [Reserved]

* * * * *

[FR Doc. 02–1119 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301209; FRL–6818–7]

RIN 2070–AB78

Mepiquat; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mepiquat (N,N-dimethylpiperidinium) in or on cottonseed at 2.0 parts per million (ppm); cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse and sheep at 0.1 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective January 23, 2002. Objections and requests for hearings, identified by docket control number OPP–301209, must be received by EPA on or before March 25, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301209 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the

"**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.h tml*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301209. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 15, 2001 (66 FR 57446) (FRL–6809–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.384 be amended by establishing a tolerance for residues of the plant growth regulator mepiquat, N,N-dimethylpiperidinium chloride and N,N-dimethylpiperidinium pentaborate, in or on cottonseed at 2.0 ppm; cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse, and sheep at 0.1 ppm.

The Agency is making the following minor changes to the tolerance action proposed in the petition:

1. The title for the tolerance (§ 180.384) will be revised to mepiquat (N,N-dimethylpiperidinium) to reflect the fact that the tolerance covers both the "chloride salt" (mepiquat chloride) and "pentaborate salt" (mepiquat pentaborate) forms of mepiquat.

2. Paragraph (a) is divided into two paragraphs with paragraph (a)(1) reflecting the "generic " tolerance for residues of either the "chloride salt," or "pentaborate salt," or both (e.g., cotton); while paragraph (a)(2) reflects those tolerances established only for the "chloride salt " form of mepiquat, i.e., mepiquat chloride. It is possible that in the future the Agency may propose combining these two paragraphs; however, mepiquat pentaborate is currently only proposed for registration on cotton. The only new commodity in this document for both mepiquat chloride and mepiquat pentaborate is cotton gin byproducts. The Mepiquat Chloride RED (March 1997) required residue data for this commodity, it has now been reviewed and the Agency has determined that a separate tolerance is required for this commodity. This resulted because of a revision to the Pesticide Assessment Guideline (Subdivision O, Residue Chemistry, 9/95) which recognized cotton gin byproducts as a raw agricultural commodity of cotton.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

A human health risk assessment was previously conducted for mepiquat chloride foliar use on cotton and was published in the Mepiquat Chloride RED, March 1997. In fact, tolerances have been established for mepiquat chloride in/on cottonseed at 2.0 ppm and animal commodities at 0.1 ppm. In addition, the Agency recently published a risk assessment (65 FR 1790, January 12, 2000) (FRL–6485–4) for mepiquat chloride use on grapes and raisins which included the previously registered use on cotton. The January 12, 2000, risk assessment reflects the most current risk assessment available for mepiquat and will be referred to throughout this document. A revised risk and exposure analysis for use of mepiquat pentaborate, a "pentaborate salt" of mepiquat being registered for foliar use on cotton, was not conducted because exposure to mepiquat chloride from use on cotton was evaluated in the Agency's January 12, 2000, risk assessment. The registrant was required to submit a complete battery of acute toxicity studies, product chemistry data and a dissociation study to verify that mepiquat pentaborate application would be toxicologically equivalent to mepiquat chloride application and that the impurities would remain essentially equivalent or improved (more protective of human/ecological health) over current mepiquat chloride products. The company maintains, and the Agency has verified that both compounds, the "chloride salt" version mepiquat chloride and the "pentaborate salt" version mepiquat pentaborate, disassociate in water in the same manner and result in the same exposure, both qualitatively and quantitatively. Use rates and other label restrictions, related to food residue levels and tolerance issues, will be the same as for current mepiquat chloride products. Review of the product chemistry data confirmed that no new toxicologically significant impurities would be involved. Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of mepiquat on cottonseed at 2.0 ppm; cotton, gin byproducts at 6.0 ppm; and meat

byproducts of cattle, goat, hog, horse, and sheep at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

The Agency has determined that mepiquat pentaborate and mepiquat chloride are not significantly different as to impurities and/or toxicologically significant moieties. The registrant has submitted a battery of acute toxicity studies for mepiquat pentaborate which demonstrate that the acute toxicity is not significantly different from that of mepiquat chloride. The registrant has also submitted a dissociation study that demonstrates that mepiquat pentaborate dissociates in water in an identical physical manner to mepiquat chloride. It is the Agency's general policy that toxicology data for one "salt" support other mineral salts and that no additional toxicological data would be required for those entities. Mepiquat chloride is already registered for use on cotton and tolerances are established in 40 CFR 180.384 for residues of mepiquat chloride in/on cottonseed. In addition, tolerances for mepiquat chloride already exist for the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep (each at 0.1 ppm). The acute toxicity data for technical grade mepiquat pentaborate indicate toxicity category III for acute oral toxicity, acute dermal, acute inhalation, and primary eye irritation. The primary dermal irritation for mepiquat pentaborate is category IV, and mepiquat pentaborate is not a skin sensitizer.

B. Toxicological Endpoints

The Agency has determined that mepiquat pentaborate and mepiquat chloride are not significantly different as to impurities and/or toxicological significant moieties. Therefore, the toxicological endpoints published for mepiquat chloride on January 12, 2000 (65 FR 1790), pertain to this revision to 40 CFR 180.384. This revision to 40 CFR 180.384 simply adds tolerances for the pentaborate "salt" of mepiquat to the existing tolerances for the chloride "salt" version of mepiquat.

The Acute Population Adjusted Dose (aPAD) is 0.6 milligrams/kilograms/day (mg/kg/day) based on a 1-year dog feeding study with a 90-day dog feeding study supporting the 1-year dog study. The no observed adverse effect level (NOAEL) was 58.4 mg/kg/day with an Uncertainty Factor of 100 and the FQPA safety factor reduced to 1X. The Chronic Population Adjusted Dose (cPAD) is 0.6 mg/kg/day based on the 1-year dog feeding study with a supporting 90-day dog feeding study. The NOAEL was 58.4 mg/kg/day with an Uncertainty Factor of 100 and the FQPA safety factor reduced to 1X. Mepiquat chloride is classified as "not likely" to be a human carcinogen.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.384) for the residues of mepiquat, in or on a variety of raw agricultural commodities. Tolerances are established for cottonseed and for the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm. A risk assessment was conducted by EPA and published for mepiquat chloride on January 12, 2000, that discusses use on cotton as well as all other registered uses of mepiquat chloride. Dietary exposure from the use of mepiquat pentaborate on cotton will be qualitatively and quantitatively the same as for the existing use of mepiquat chloride on cotton. The Agency has a disassociation study that confirms the qualitative equivalence and the same use rates and other restrictions will ensure equivalent quantitative exposure. The company expects that the pentaborate salt formulation of mepiquat, mepiquat pentaborate, will replace a significant amount of mepiquat chloride use on cotton.

i. *Acute exposure.* The acute dietary food exposures (95th percentile) occupy only 1.5% of the aPAD for the most highly exposed subgroup (children 1–6 years). This is based on a Tier 1 analysis, assuming tolerance level residues and 100% crop treated. Percent crop treated and/or anticipated residues were not used in the January 12, 2000, analysis.

ii. *Chronic exposure.* The chronic dietary food exposures occupy only 0.3% of the cPAD for the most highly exposed subgroup (children 1–6 years). This is based on a Tier 1 analysis, assuming tolerance level residues and 100% crop treated. Percent crop treated and/or anticipated residues were or were not used in the January 12, 2000, analysis.

iii. *Cancer.* Mepiquat chloride was classified as "not a likely human carcinogen." Therefore, a cancer risk assessment was not conducted for this risk analysis; nor, was one conducted for the January 12, 2000, risk analysis that discussed the use on cotton as well as all other mepiquat uses.

2. *Dietary exposure from drinking water.* The Agency published a risk assessment for mepiquat chloride on January 12, 2000, that discusses use on cotton as well as all other registered uses of mepiquat chloride. In that analysis risk estimates for exposure to mepiquat chloride were below the Agency's level of concern. The Agency has reviewed a dissociation study for mepiquat pentaborate that demonstrates that mepiquat pentaborate dissociates in an identical physical manner to mepiquat chloride in water. Therefore, the analysis performed for mepiquat chloride or the "chloride salt," also pertains to this mepiquat "pentaborate salt" use because the use rate, maximum seasonal use rate and other pertinent use factors remain the same as for mepiquat chloride or the "chloride salt."

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mepiquat chloride and/or mepiquat pentaborate are not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether mepiquat pentaborate and/or mepiquat chloride have a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mepiquat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mepiquat has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

In general. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal

and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

The Agency has determined that the FQPA safety factor for mepiquat is 1X. See the Agency's risk assessment for mepiquat chloride dated January 12, 2000, for details. The facts are that mepiquat pentaborate is another "salt" of mepiquat and that mepiquat pentaborate disassociates to mepiquat and therefore the basic toxicology data base for mepiquat chloride pertains to mepiquat pentaborate.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* The Agency concludes that residues of mepiquat in food and drinking water will not exceed the Agency's level of concern (100% of the aPAD). For details see the Agency risk assessment published on January 12, 2000.

2. *Chronic risk.* The Agency concludes that residues of mepiquat in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD). For details see the Agency's risk assessment published on January 12, 2000.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mepiquat chloride and mepiquat pentaborate are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mepiquat chloride and mepiquat pentaborate are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Mepiquat chloride is classified as a "not likely" human carcinogen and thus not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to mepiquat residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances established for mepiquat on cotton. Thus, there are no international harmonization issues for these tolerances.

C. Conditions

The Agency is requiring as conditions for registration the following:

1. Side-by-side residue field trials conducted with water as the diluent in all cotton growing areas of the United States (minimum of three).

2. Developmental neurotoxicity study for mepiquat pentaborate.

V. Conclusion

Therefore, the tolerance expression in 40 CFR 108.384(a)(1) is revised to reflect residues of mepiquat, in or on cottonseed; cotton gin by-products; and meat byproducts of cattle, goat, hog, horse, and sheep at 2.0, 6.0, and 0.1 ppm, respectively.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301209 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 25, 2002.

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

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

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

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For

additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301209, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 4, 2002.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.384 is revised to read as follows:

§ 180.384 Mepiquat (N,N-dimethylpiperidinium); tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator mepiquat (N,N-dimethylpiperidinium) in or on the following commodities:

Commodity	Parts per million
Cattle, mbyp	0.1
Cotton, gin by-products	6.0
Cottonseed	2.0
Goats, mbyp	0.1
Hogs, mbyp	0.1
Horses, mbyp	0.1
Sheep, mbyp	0.1

(2) Tolerances are established for residues of the plant growth regulator mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Goat, fat	0.1
Goat, meat	0.1
Grapes	1.0
Hogs, fat	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, meat	0.1
Raisins	5.0
Sheep, fat	0.1
Sheep, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–1618 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 01–2928]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission updates line count input values for the high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2002. Specifically, the Commission shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. The Commission further updates the company-specific data used in the model to calculate investment in general support facilities and switching costs.

DATES: Effective February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket No. 96–45 released on December 18, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Order

1. *2000 Line Counts.* Consistent with the framework adopted in the *Twentieth Reconsideration Order*, 66 FR 26513, May 8, 2000, and the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, the Commission concludes the cost model should use year-end 2000 line counts filed July 31, 2001, as input values for purposes of estimating average forward-looking costs and determining support for the year 2002. The Commission also concludes that line counts should be allocated to the classes of service used in the model based on the line count data filed pursuant to the *1999 Data Request*. The Commission further concludes that special access line counts should be allocated on the basis of the *1999 Data Request* data and trued-up to 2000 43–08 ARMIS special line counts. In addition, the Commission will adjust support amounts every quarter to reflect the lines reported by carriers, according to the methodology set forth in the *Twentieth Reconsideration Order*, 66 FR 26513, May 8, 2000. The Commission also stated that it plans to initiate a proceeding to study how often line counts and other input values should be updated.

2. Further, consistent with its action in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, and because an updated customer location and road data set remains unavailable at this time, the Commission will not update customer location and road data at this time. Although the Commission recognizes that a new source of year 2000 Census data may be useful in creating an updated customer location and road data set in the future, such information is not in a usable data set format for purposes of determining support for 2002. The Commission, therefore, defers the issue of using these data in the model until the Commission initiates a comprehensive proceeding to study revisions and changes to the model inputs and model platform. In the meantime, all new lines should be treated as if they were located at existing locations in the model.

3. *Class of Service Allocations.* The Commission finds that using the methodology employed in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, which used year-end wire center line count data filed pursuant to the *1999 Data Request*, remains a reasonable method for allocating line counts to the classes of service used in the model. The Commission believes this methodology is a preferable approach because it remains a reasonably accurate process for disaggregating line counts without imposing burdensome reporting requirements on carriers. For purposes of 2002 support, the Commission therefore shall allocate line counts to the classes of service used in the model by dividing the year-end 2000 lines reported by non-rural carriers into business lines, residential lines, payphone lines, and single line business lines for each wire center in the same proportion as the lines filed pursuant to the *1999 Data Request* (year-end 1998 lines).

4. The Commission also finds that estimating special line growth for purposes of calculating 2002 support can be accurately determined by dividing the 2000 ARMIS special access lines among wire centers in the same proportion as the special lines from the *1999 Data Request*. The Commission finds that this methodology continues to be a reasonable approach to estimating special line growth for calculating support for 2002.

5. *Matching Wire Centers.* The Commission will use the same methodology employed in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, to match wire centers reported by carriers in their quarterly line count filings with wire centers found in the *1999 Data Request* and in the model's customer location data.

6. *General Support Facilities.* In addition to line counts, the model uses other types of data that are updated annually under current Commission rules and procedures. Among other things, the model uses company-specific ARMIS data to calculate investment in general support facilities (GSF). GSF investment includes buildings, motor vehicles, and general purpose computers. A portion of GSF investment must be added to the model's estimate of outside plant, switching, and transport investment to adequately reflect the cost providing the supported services. The Commission finds that updating the tables used in the model with 2000 ARMIS data used to compute GSF investment will improve the model's cost estimates by taking into account the current costs of GSF investment associated with supported services.

7. *Switching.* The model also uses company-specific data in determining switching costs. A wire center's switch directs both interstate and intrastate traffic. Universal service support, however, is only provided for the portion of the switch used to direct intrastate traffic. Therefore, to determine the amount of a wire center's switch that is eligible for support, the model needs to determine the percentage of the switch used to direct intrastate service. The model currently uses 1998 ARMIS Dial Equipment Minutes (DEM) data to determine the overall switch usage. Then, because the ARMIS DEM data do not distinguish between local and intrastate toll usage, the model uses 1997 traffic parameter data filed with the National Exchange Carrier Association (NECA) which, in addition to identifying intrastate and interstate switch usage, identifies the local DEM to compute the portion of non-interstate local usage. Therefore, the model currently uses data sources from different years to determine the portion of the switch used to direct intrastate traffic. The Commission further concludes that it should update the tables in the model with the most recent traffic parameters available from NECA to determine the percentage of the switch allocated to supported services and the switch port requirement for interoffice transport. The Commission finds that using only NECA data for switch allocation, which are only one year behind the ARMIS data but contain all the data necessary to serve as the sole source for switch apportionment is a preferable alternative than using two different sources of data. Further, the Commission will continue to use ARMIS traffic parameter data for estimating signaling costs.

8. *Model Platform.* The Commission defers, until a later date, the question of whether and when to transition to the Delphi version of the forward-looking cost model. The Delphi version posted on the Commission's web site contained certain modifications, in addition to translation to the Delphi computer language. Commenters have noted that some of the cost estimates generated by this modified version of the cost model of the cost model significantly differ with the results from the previous year's Turbo-Pascal version. This may warrant further investigation of whether the total amount of universal service support can vary substantially with small changes in inputs due to technical corrections to the model. In addition, numerous commenters have recommended use of the cost model in Visual Basic computer language in lieu of the Delphi version. They contend that Visual Basic is a preferable computer language because it is: (1) More widely used than Delphi; and (2) part of the cost model already uses Visual Basic and therefore, transition here would make the cost model more uniform. In order to permit an opportunity for further consideration and analysis of these issues, the Commission will use a Turbo-Pascal version of the model, at present, to calculate support for non-rural carriers for calculating 2002 cost estimates. The Commission anticipates that a number of technical corrections will ultimately be made to the cost model. Upon further examination of proposed modifications, the Commission may revise its calculations of support for future quarters in 2002.

II. Order on Reconsideration

9. The Commission denies Sprint Corporation's (Sprint) petition for reconsideration of the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000. Specifically, after review of the arguments presented on reconsideration, the Commission concludes that Sprint has not provided any new information or arguments that requires it to alter its decision to update line counts without updating customer location data for purposes of calculating support for 2001. As the Commission explained in the *2001 Line Counts Update Order*, updated line count data were available for the model's inputs, but updated customer location data were not. Consequently, the Commission concluded that, on balance, it was better to update the model with available line count data at that time than wait until a customer location data set could be obtained.

10. Relying on that same analysis and reasoning, the Commission has decided to use updated line count data in the universal service cost model for purposes of calculating support for non-rural carriers for 2002 without updating customer location data. Again, because an updated customer location and road data set remains unavailable for use at this time, the Commission finds that, on balance, it is best not to delay updating line counts. In addition, the Commission has noted that it intends to initiate, at a later date, a proceeding to study proposed revisions and changes to the model inputs and model platform.

VI. Order Clauses

11. It is ordered pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220. 254, 303(r), 403, and 410, and section 1.108 of the Commission's rules, 47 CFR 0.91(f), this Order is adopted. Specifically, the Commission updates line count input values for the high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2002. Therefore, the Commission shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. In addition, non-rural support amounts will continue to be adjusted each quarter to account for line growth based on the wire center line count data reported quarterly by non-rural carriers. The Commission further updates the company-specific data used in the model to calculate investment in general support facilities and switching costs.

12. It is further ordered that, pursuant to sections 4, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, and sections 1.106 and 1.429 of the Commission's rules, 47 CFR 1.106, 1.429, that the petition for reconsideration filed January 26, 2001, by Sprint Corporation is denied.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1567 Filed 1–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Endangered Status for *Carex lutea* (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations (one population is made up of two subpopulations) in Pender and Onslow Counties, North Carolina. *Carex lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This action extends the protection of the Act to *C.* lutea.

DATES: This rule is effective February 22, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Ratzlaff at the above address (828/258–3939, extension 229).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stems) may reach one meter (39 inches (in)) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (11 in) long, while those of the vegetative shoots reach a length of 65 cm (26 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.8 to 1.6 in) long, 1.5 to 2.5 millimeters (mm) (0.06 to 0.12 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.4 to 2.4 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.4 to 0.6 in) long and 1 cm (0.4 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.8 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.8 to 7.1 in). The inflated perigynia (sac that encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (0.16 to 0.20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *Carex lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.* described *Carex lutea* in 1994 from specimens collected in 1992 in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of management concern. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow Counties, North Carolina. As stated by LeBlond (1996):

> * * * localities where *Carex lutea* have been found are ecologically highly unusual * * * The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley province of Georgia and Alabama; and pinelands of the Carolinas and southern New Jersey.

These rare savannas, underlain by calcareous deposits, support unusual assemblages of plants, including several species known from less than a dozen sites worldwide (Schafale 1994). LeBlond (1996) characterizes these habitats as "a small archipelago of phytogeographic islands" that form a refuge for these rare and unique species. Despite extensive searches of the Gulf Coast in northern Florida and southern Alabama, and Atlantic Coast sites in South Carolina, Georgia, and Florida, no other populations of *Carex lutea* were found outside the North Carolina coastal plain. The species appears to be a very rare endemic, narrowly restricted to an area within a 3.2 kilometer (2-mile) radius of the Onslow/Pender County line in southeastern North Carolina (LeBlond 1996). It is listed as endangered by the State of North Carolina (Amoroso and Weakley 1995; M. Boyer, North Carolina Department of Agriculture, personal communication, 1998).

Previous Federal Activities

Federal Government actions on this species have only recently begun because the species was unknown to science before 1991 and its official description was not published until 1994. In 1995, we funded a survey to determine the status of *Carex lutea* throughout its known and potential range; we accepted the final report on this survey in 1997. A 1998 status report confirmed the species' precarious status (LeBlond 1998). We elevated *C. lutea* to candidate status (species for which we have sufficient information on status and threats to propose the taxon for listing as endangered or threatened) on October 16, 1998. On August 16, 1999, we proposed the species for listing as endangered (64 FR 44470).

Our final rule would have been due on August 16, 2000. However, we were forced to cease our work on the rule because compliance with outstanding court orders, judicially approved settlement agreements, and litigation related activities required all remaining fiscal year 2000 funds and exhausted the entire fiscal year 2001 budget that Congress appropriated for completing listings and critical habitat designations pursuant to section 4 of the Act. The Director of the Service issued a memo on November 17, 2000, directing all Regions to immediately halt listing actions not under court order or settlement agreement.

The Service and several conservation organizations have reached an agreement that will enable us to complete work on evaluations of numerous species proposed for listing under the Act. This final rule is made in accordance with a judicially approved settlement agreement, which requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to five independent specialists in order to solicit comments on the scientific or commercial data and assumptions relating to the supportive biological and ecological information for *Carex lutea*. The purpose of such review is to ensure that the listing decision is based on the best scientific and commercial information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although solicited, none of the five reviewers provided comments on the proposed rule.

Summary of Comments and Recommendations

In the August 16, 1999, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties and requested them to comment. We published a newspaper notice inviting public comment in the *Wilmington Journal* (North Carolina) on August 26, 1999.

We received one comment, from the North Carolina Department of Environment and Natural Resources, that expressed support for listing, and concurred with our conclusion in the proposed rule that designation of critical habitat would not be beneficial for golden sedge because of the plant's extreme rarity.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Carex lutea* should be classified as an endangered species. We followed procedures found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *C. lutea* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven of the eight known populations of *Carex lutea* are on privately owned land and are threatened with the destruction or adverse modification of their habitat from residential, commercial, or industrial development; clay mining; drainage activities associated with silviculture and agriculture; and suppression of fire. The eighth population, on land now owned by the North Carolina Department of Transportation (NCDOT), was severely disturbed in the 1980s by clearcutting, ditching, and draining prior to NCDOT ownership. This site has been purchased by the NCDOT as a mitigation site and is currently under study for the restoration of natural communities and protection and enhancement of rare species populations. At least some of the original *C. lutea* plants survived the previous damage to the site, and the remaining population appears stable.

As described in the "Background" section, the habitat upon which this species depends is extremely rare. Most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet). Three of the sites have populations composed of fewer than 50 individuals. Although little is known about natural population fluctuations in this species, severe population declines (exceeding 83 percent) were noted between 1992 and 1996 at three of the eight remaining sites. The exact causes for these losses are unknown. One population is on a roadside, and all of one population and part of another are on power line rights-of-way, where they are exceptionally vulnerable to destruction from highway expansion or improvement or herbicide application. All the known sites have been damaged to some degree in the past by ditching and drainage, mining, logging, bulldozing, right-of-way maintenance, or road building. Because the species was only recently discovered, knowing exactly what its historic distribution and population numbers might have been is not possible. However, LeBlond (1996) states: "It is probable that drainage ditches (that lower the water table over a large area) have reduced, perhaps greatly, the amount of suitable habitat available for *Carex lutea* and other rare species at these sites."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial trade in *Carex lutea* at this time. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity. Most populations are too small to support even the limited collection of plants for scientific or other purposes.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Carex lutea* is listed by the State of North Carolina as endangered. As such, it is afforded legal protection within the State by North Carolina General Statutes, §§ 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for the monitoring and management of State-listed species and prohibit the taking of plants without a permit and written permission from the landowner. However, State prohibitions against

taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Two of the sites are somewhat protected by registry agreements between the landowner and the North Carolina Natural Heritage Program. These agreements are strictly voluntary, however, and may be canceled by the landowner at any time. Although part of another population is owned by The Nature Conservancy (TNC), this population is adjacent to a quarry. Activities in the quarry may alter the hydrology of the area occupied by *C. lutea* and thus pose a threat to this population. Portions of the population not owned by TNC are also vulnerable to destruction by timber harvesting and fire suppression.

Section 404 of the Clean Water Act represents the primary Federal law that may provide some regulation of the species' wetland habitats. However, the Clean Water Act by itself does not provide adequate protection for the species. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, the Corps may issue nationwide permits for certain activities that are considered to have minimal impacts. However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. The Corps may also authorize activities by an individual or regional general permit when the project does not qualify for authorization under a nationwide permit. These projects include those that would result in more than minimal adverse environmental effects, either individually or cumulatively, and are typically subject to more extensive review. Whatever the type of permit deemed necessary under section 404, rare species such as *Carex lutea* may receive no special consideration regarding conservation or protection unless they are listed under the Act.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this final rule, most of the remaining populations are small in numbers of individuals and in area covered by the plants. This may suggest low genetic variability within populations, making it more important to maintain as much habitat and as many remaining colonies as possible.

Little is known about the life history of this species or about its specific environmental requirements. However, its apparent restriction to wet pine savannas is a strong indication that it is adapted to the pyric (associated with burning) and hydrological conditions associated with this community type. Such habitats were historically exposed to wildfires approximately every 3 to 5 years, usually during the growing season, which maintained the open habitats favored by *Carex lutea* and dozens of other fire-adapted species. During winter and spring, the soils where *C. lutea* grows are often shallowly flooded. At other times of the year these sites are very wet to saturated. Such high water tables also serve to control woody growth in undisturbed savanna habitats. However, without regular fire, which has been intensively suppressed on the Atlantic coastal plain for half a century, and with the lowering of water tables due to ditching, the open savannas are rapidly changing to dense thickets dominated by the trees and shrubs of the adjacent uplands. As a result, the extraordinary plant diversity characteristic of the savannas is being eliminated, and species such as *C. lutea* are disappearing from the landscape. Even where such habitat is owned by an organization that is able to manage the land with prescribed fire, like TNC, increasingly restrictive smoke management regulations make burning very difficult.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, we find it appropriate to list *Carex lutea* as an endangered species. Endangered status is more appropriate than threatened status because of the following factors—this species occurs in only 2 counties; only 8 populations survive, all of which have already been damaged to some degree; most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet); three of the remaining populations are composed of fewer than 50 individuals; there are documented severe population declines (exceeding 83 percent) between 1992 and 1996 at three of the eight remaining sites; and all of the remaining populations are currently threatened by fire suppression, highway expansion, right-of-way management with herbicides, drainage ditching, or a combination thereof.

Critical Habitat

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

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

The designation of critical habitat does not, in itself, restrict State or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the Act, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., activities authorized, funded, or conducted by a Federal agency) and does not affect exclusively State or private activities.

Under the Act's section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for

both the survival and recovery" of the species (50 CFR 402.02). Whether or not there is a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' currently occupied range have been designated. In these cases, Federal agencies are required to consult with us (50 CFR 402.14(a)) when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

Theoretically, a designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when or where golden sedge is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 consultation requirements (i.e., activities that may affect essential features of the designated area). For example, a project some distance away that depleted the groundwater in the aquifers that feed the wetland habitat of golden sedge, or otherwise affected an essential feature of the designated habitat, would be subject to the provisions of section 7 of the Act.

In the proposed rule, we found that designation of critical habitat for *Carex lutea* was not prudent because of the increased risks to the species associated with disclosing specific locations, and because such a designation would not be beneficial to the species. As to increased risks, we determined that because most populations of this species were small, the loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Although taking without a permit is prohibited by the Act from locations under Federal jurisdiction, none of the known populations are located on Federal land. Therefore, we believed that publication of critical habitat descriptions and maps would increase the vulnerability of the species to collection, but would not increase its protection under the Act. In fact, the contractor we hired to conduct the rangewide status survey declined to include directions to the occupied sites in his report, stating: "Due to the extreme rarity of *Carex lutea* and its vulnerability to extinction, a description of site boundaries or precise directions to population micro sites cannot be provided here" (LeBlond 1996).

In determining in the proposed rule that designation of critical habitat would not benefit the golden sedge, we first noted that all but one of the remaining populations of golden sedge occur on land that is in private ownership, with the other site owned by the NCDOT. In other words, none of the populations occur on Federal land. We realized that Federal involvement with this species may occur through Federal funding for power line construction, maintenance, and improvement; highway construction, maintenance and improvement; drainage alterations; and permits for mineral exploration and mining on non-Federal lands, and that the use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2) of the Act. However, this would be true whether or not critical habitat was designated. Furthermore, the precarious status of *Carex lutea* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. Thus, the only potential benefit that would result from critical habitat designation would be notification to Federal, State and local government agencies and private landowners. However, during the listing process, and after a species is listed, we conduct public outreach in affected local communities and with government agencies, so that the owners and managers of all the known populations of *C. lutea* were made aware of the plant's location and how important it is to protect the plant and its habitat. For these reasons, we concluded that designation of currently occupied habitat as critical habitat would not result in any additional benefit to the species.

Finally, because this species occupies an extremely rare habitat type, little of which remains in an unaltered, functional state, we did not expect that reintroduction to currently unoccupied habitat would be essential for recovery efforts. Therefore, we also concluded that designation of currently unoccupied habitat as critical habitat would not result in any additional benefit to the species.

We received only one comment on our prudency determination. The North Carolina Department of Environment and Natural Resources, in its comments on the proposed rule, concurred that designation of critical habitat for this species would not be beneficial.

However, recent court decisions (e.g., Natural Resources Defense Council v. U.S. Department of the Interior 113 F. 3d 1121 (9th Cir. 1997); Conservation Council for Hawaii v. Babbitt, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our "not prudent" finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a "not prudent" finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the low numbers of individuals, the small area covered by the eight remaining populations, and the inherent transportability of plants, golden sedge is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, illegal collection, or trade of this species. This may be due to its recent description as a new species to science and to the locations of the populations being known by only a few individuals. Also, it is very difficult to monitor such losses on scattered private lands. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation, the *Conservation Council* court held that the mere absence of a species from

nonfederal land did not mean that there were no benefits to designating that land as critical habitat, as there could be Federal activity on that land in the future. As to Federal land, the court held that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. Finally, the court ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits to the species. Although the remaining populations of golden sedge are located exclusively on non-Federal lands, there may be Federal actions affecting these lands in the future. Furthermore, the primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Finally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we must find that designation of critical habitat for the golden sedge is prudent. However, we are deferring our critical habitat determination due to budgetary constraints associated with the listing program. Our entire FY 2002 budget for listing actions has been consumed due to required compliance with outstanding court orders, settlement agreements, meeting statutory deadlines, and litigation related activities. This final rule is made in accordance with a judicially approved settlement agreement that requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002. Funds are insufficient to also allow us to propose critical habitat with this final determination. Critical habitat designations are costly, requiring mapping, economic analysis, and often public hearings and meetings that are costs above those incurred for listing the species. We will develop a proposal to designate critical habitat for this species as soon as feasible, considering our budget and workload priorities.

Available Conservation Measures

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

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

Federal activities that could impact *Carex lutea* and its habitat in the future include, but are not limited to, the following—power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. We will work with the involved agencies to secure protection and proper management of *C. lutea* while accommodating agency activities to the extent possible.

Now that the species has been added to the Federal List of Endangered and Threatened Wildlife and Plants, additional protection from taking is provided when the taking is in violation of any State law, including State trespass laws. The listing also provides protection from inappropriate commercial trade and encourages active management for *Carex lutea*. Specifically, the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. You may request copies of the regulations on plants from and direct inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia (telephone 404/679–4176).

It is our policy, published on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The eight remaining populations of *Carex lutea* occur on non-Federal land. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9 of the Act, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, wetland modification; power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any biological opinion issued by us under section 7 of the Act;

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(3) Normal landscape activities around personal residences.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law. North Carolina prohibits the intrastate trade and take of *C. lutea* without a State permit and written permission from the landowner; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

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Schafale, M., and A. Weakley. 1990. Classification of the natural communities of North Carolina (third approximation). Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Author

The primary author of this document is Mr. Allen Ratzlaff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Carex lutea	Golden sedge	U.S.A. (NC)	Cyperaceae	E	721	NA	NA
*	*	*	*	*	*	*	

Dated: January 15, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–1630 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274-1301-02; I.D. 102501B]

RIN 0648-AP06

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

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

ACTION: Final rule, final 2002 specifications, and preliminary commercial quota adjustment; correction.

SUMMARY: On December 26, 2001, NMFS published final specifications for the 2002 summer flounder, scup, and black sea bass fisheries and made preliminary adjustments to the 2002 commercial quotas for these fisheries. The preamble to the final rule clearly indicated that the minimum mesh threshold catch level for black sea bass is established at 500 lb (226.8 kg) from January through March, and to 100 lb (45.3 kg) from April through December. However, the regulation to implement this change was written incorrectly. The intent of this action is to correct the portion of the regulations that implements the minimum mesh threshold catch limit for black sea bass.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978)281–9279, fax (978)281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2001 (66 FR 58097) NMFS published proposed specifications for the summer flounder, scup, and black sea bass fisheries for the 2002 fishing year. The final specifications were published on December 26, 2001 (66 FR 66348). Both the proposed and final specifications addressed reduction of the threshold black sea bass catch level that triggers the minimum mesh-size requirement from 1,000 lb (453.6 kg) to 500 lb (226.8 kg) for Quarter 1 (Jan. through March), and to 100 lb (45.3 kg) for Quarters 2 through 4 (April through December). However, in both the proposed and final rules, the regulation at § 648.14(a)(92) was incorrectly written. It inadvertently referenced the recreational possession limit of 25 black sea bass at § 648.145(a), rather than the minimum mesh threshold catch level of 500 lb (226.8 kg) or 100 lb (45.3 kg) described at § 648.144(a). Section 648.14(a)(2) should have referenced the threshold black sea bass catch level approved by the Mid-Atlantic Fishery Management Council at § 648.144(a), rather than the recreational possession limit at § 648.145(a). This document corrects this error.

§ 648.14 [Corrected]

On page 66357, in § 648.14(a)(92), sixth line down, remove "§ 648.145(a)" and add, in its place, "648.144(a)(1)(i) (i.e., 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the gear restrictions of § 648.144(a)."

Dated: January 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–1528 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the pollock total allowable catch (TAC) for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., March 10, 2002.

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

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

The A season allowance of the pollock TAC in Statistical Area 630 is 1,122 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 522 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630. Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under

5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: January 17, 2002.

Jonathan M. Kurland,

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

[FR Doc. 02–1631 Filed 1–17–02; 4:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 213

RIN 3206–AJ53

Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindu Interpreters

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revoke the Schedule A excepted service appointing authority for Chinese, Japanese and Hindu interpreters because the conditions justifying the original exception no longer exist. Revocation would bring the positions filled under this Schedule A authority into the competitive service and permit noncompetitive conversion of persons serving under the authority to either competitive or excepted service appointments.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send or deliver written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Christina Vay on 202–606–0960 or FAX 202–606–0390.

SUPPLEMENTARY INFORMATION: The Schedule A authority, 5 CFR 213.3102(f), was established in 1903 for use by all agencies. In the past, complexities in the examining system necessitated excepted service authorities on the basis that examining was impracticable. In 1903, this was true for Chinese, Japanese, and Hindu languages.

Competitive examining has changed drastically in the almost 100 years since this authority's creation. Today, agencies successfully examine for positions with specific language requirements. Because agencies can examine for all other languages, we see no reason to continue this authority.

Conversion of Employees

The revocation of this authority would bring the positions into the competitive service as provided in 5 CFR 316.701 and 316.702. If this regulation becomes final, persons serving under 5 CFR 213.3102(f) and who are citizens would be noncompetitively converted to the competitive service. If there are positions for which examining is still impracticable, or there are noncitizens serving under the authority, they will be placed under other appropriate excepted appointing authorities.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees. Reporting and recordkeeping requirements.

Kay Coles James,
Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213 —EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 et. seq.; and Pub. L. 106–117 (113 Stat. 1545).

§ 213.3102 [Amended]

2. Paragraph (f) of § 213.3102 is removed and reserved.

[FR Doc. 02–1603 Filed 1–22–02; 8:45 am]
BILLING CODE 6325–38–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1703

RIN 0572–AB70

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This proposed rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging scoring criterion; clarify financial information to be submitted; and make other minor changes and corrections.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than February 22, 2002.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590 or via facsimile transmission to (202)

720–0810. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250–1550. Telephone: 202–720–0413; e-mail at *mmorgan@rus.usda.gov;* or, Fax: 202–720–1051.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable supplementary information on this action.

Dated: December 28, 2001.

Roberta D. Purcell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–1538 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–000 and PL02–1–000]

Notice of Inquiry and Guidance for Filings in the Interim

January 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is considering whether to revise its rules to address public availability of critical energy infrastructure information. The Commission issued a policy statement in Docket No. PL02–1–000 on October 11, 2001 (66 FR 52917, October 18, 2001), removing from easy public access previously public documents that detail the specifications of energy facilities licensed or certificated by the Commission. The policy statement directed requesters seeking this information to follow the Freedom of Information Act procedures found at 18 CFR 388.108. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner.

EFFECTIVE DATES: Responses must be submitted on or before March 11, 2002. Requests for copies of the non-public appendix must be filed on or before February 7, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the appropriate treatment of previously public documents in the aftermath of the September 11, 2001 terrorist attacks on the United States of America. Accordingly, this Notice sets forth the Commission's general views on how it intends to treat those documents, and asks specific questions on the scope and implications of maintaining the confidentiality of certain documents that previously had been made public but removed from easy public access under the Policy Statement issued in Docket No. PL02–1–000 on October 11, 2001 (Policy Statement). See 97 FERC ¶ 61,030. The major matter that this Notice addresses is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and Federal environmental laws and the need to protect the safety and well being of American citizens from attacks on our nation's energy infrastructure.

By definition, this Notice does not propose any specific changes to the Commission's regulations, but it does reflect what the Commission may consider doing in the future. As an initial matter, the Commission believes that the process under the Freedom of Information Act, 5 U.S.C. 552 (FOIA), which the Policy Statement established as the means for requesting previously public documents in the short run, is not well suited in the long run for handling most requests for this critical energy infrastructure information (CEII).[1] Therefore, the questions posed in the Notice are premised on the Commission's processing most CEII requests outside of the FOIA procedures. The Commission also believes that the scope of the Policy Statement should probably be maintained, viz., that limiting access to CEII should be confined to certificated, licensed, or constructed projects. Put another way, the Commission currently intends that information contained in or related to proposed projects should be available as before October 11, 2001. (Care would have to be taken to the extent the information detailed existing facilities.) Otherwise, the implementation of the environmental laws may be impeded or the processing of certificate or license applications may be unduly complicated. Nevertheless, the Notice asks specific questions as to the correctness of this approach. The Commission emphasizes that its intention here is to address how the public with a need for certain documents obtains access to those documents, not whether they should have access to them.

As a separate matter, the Commission is using this opportunity to provide guidance on making filings with the Commission to the companies whose facilities could be the targets of terrorist attacks. Between now and the effective date of a final decision in Docket No. RM02–4–000, these companies may seek confidential treatment of filings or parts of filings which in their opinion contain CEII. For this purpose, they are directed to follow the procedures in 18 CFR 388.112, and also clearly note "PL02–1" on the first page of the document.

II. Background

The September 11, 2001 terrorist attacks prompted the Commission to issue a policy statement on October 11, 2001, in PL02–1–000, addressing the treatment of previously public documents. See 97 FERC ¶61,030.[2] The

[1] Assuming that much of the information identified as CEII will be exempt from mandatory disclosure under FOIA, using FOIA as the exclusive mechanism for determining release would mean that people with a need for the information might be denied access to exempt information. In any event, under FOIA, the agency may not consider a requester's particular need for the information. Moreover, once release is made to one requester under FOIA, release is generally avaialble to all requesters, and if information is released pursuant to FOIA, the agency may not restrict the recipient's use or dissemination of that information. Therefore, if the Commission wishes to make otherwise exempt information available to a requester based on the requester's need for the information, or wishes to limit the recipient's use and dissemination of the information, it must do so outside of the confines of the FOIA.

[2] Shortly after the attacks, the Commission issued another policy statement in Docket No. PL01–6–000, in which it provided guidance to regulated companies regarding extraordinary expenditures necessary to safeguard national energy supplies. See 96 FERC ¶61,299 (2001). The Commission recognized there that electric, gas, and oil

Continued

Commission announced there that it would no longer make available to the public through its Internet site, the Records and Information Management System (RIMS), or the Public Reference Room, documents such as oversized maps that detail the specifications of energy facilities already licensed or certificated under Part I of the Federal Power Act, 16 U.S.C. 719a, *et seq.*, and section 7 (c) of the Natural Gas Act, 15 U.S.C. 717f(c), respectively. Rather, anyone requesting such documents was directed to follow the procedures set forth in 18 CFR 388.108 (Requests for Commission records not available through the Public Reference Room (FOIA Requests)). The Policy Statement also instructed staff to report back to the Commission within 90 days on the impact of this newly announced policy on the agency's business. This Notice reflects staff's report.

The Commission was not alone in its reaction to protecting sensitive information. The Associated Press reported on October 12, 2001, that "Federal agencies are scrutinizing their Web sites and removing any information they believe terrorists might use to plot attacks against the nation. Federal agencies have been reviewing their sites in the wake of the terrorist attacks." The report referred to action by the Nuclear Regulatory Commission, the Environmental Protection Agency, the Centers for Disease Control and Prevention, and the United States Department of Transportation Office of Pipeline Safety. Along the same lines, the United States Department of Justice pointed out a short time later:

> In light of those events [of September 11, 2001], and the possibilities for further terrorist activity in their aftermath, federal agencies are concerned with the need to protect critical systems, facilities, stockpiles, and other assets from security breaches and harm—and in some instances from their potential use as weapons of mass destruction in and of themselves. Such protection efforts, of course, must at the same time include the protection of any agency information that could enable someone to succeed in causing the feared harm.

www.usdoj.gov/oip/foiapost/2001foiapost19.htm.[3] Subsequently, in early November, the Department of Energy Office of Environment, Safety and Health blocked all access to environmental assessments and environmental impact statements and related documents published on the Department's National Environmental Policy Act Web site.

Since September 11, 2001, our country fortunately has not experienced any attacks as devastating as the ones experienced on that day. On at least three occasions, however, the Attorney General of the United States put the country on high alert because of threatened terrorist attacks.[4] The Federal Bureau of Investigation has likewise warned oil and gas companies throughout the United States and Canada to be on the highest alert. Under these circumstances, the Commission finds that the concerns about threats to the energy infrastructure over which it has regulatory responsibilities still exist, and that the Commission must proceed to examine its policy and any related regulations on making information about that infrastructure available to the public. The Commission emphasizes, however, that in no way is it proposing to prevent or otherwise impede the public from having access to information it needs in order to respond to applications and other proposals from the regulated companies. This Notice is not intended to address whether the public with such a need has access to certain documents; rather, it is intended to address how the public with such a need will have access to certain documents.

III. Implementation of Policy Statement

A brief overview of the Commission's experience since issuance of the Policy Statement may help to understand the instant task better, because this Notice is understandably informed by that experience. To implement the policy, the Commission's staff first disabled RIMS access to all oversized documents, which frequently contain detailed infrastructure information and also removed them from the Public Reference Room. Staff next identified and disabled or denied access to other types of documents dealing with licensed hydropower projects, certificated natural gas pipelines, and electric transmission lines that appeared to include critical infrastructure information. This effort, which was undertaken as cautiously and methodically as possible, affected tens of thousands of documents.

As of January 3, 2002, the treatment of previously public documents as non-public generated twenty-five FOIA requests. Most of these requests are pending, as the time for responding is still running or has been tolled because the Commission sent letters to the submitters of the information for their views on the applicability of the FOIA exemptions. See CFR 385.112(d). In one instance, however, the FOIA request was mooted, because the Commission provided the document to the requester outside the FOIA process. The requester was a pipeline applicant who sought a non-published environmental assessment that was referenced in the order issuing the applicant a certificate. As the applicant, the requester was a unique member of the public, who had to have the environmental assessment to decide whether to accept the certificate, and, if so, how to comply with its terms. Moreover, a company whose facilities were intended to be protected from terrorist attacks by the Policy Statement could fairly be assumed to treat any sensitive information contained in the environmental assessment in the same way that the Commission would, that is, to protect it from getting into the hands of terrorists. Therefore, the company's request was handled outside the FOIA process.[5]

As a separate matter, since the issuance of the Policy Statement, the Commission has also entertained a request from a company to remove what in its view was critical infrastructure information which had not been removed from public access as part of the staff's efforts to implement the policy on previously public documents. Williston Basin Interstate Pipeline Company filed revised tariff sheets on November 30, 2001, to remove the system maps from its tariff, and requested a waiver of 18 CFR 154.106 to do so.[6] The Commission denied Williston Basin's specific proposal as unnecessary because it construed the proposal as a request for confidential treatment of those particular sheets in its tariff, and granted that request. See Williston Basin Interstate Pipeline Company, 97 FERC ¶ 61,369 (2001). The Commission reasoned that this action would allow it to have the information needed to fulfill its regulatory obligations, while at the same time satisfying Williston Basin's desire

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companies may need to adopt new procedures, update existing procedures, and install facilities to further safeguard their systems, and that these efforts might result in extraordinary expenditures. The Commission assured these companies that it would give its highest priority to processing any filing made for the recovery of such expenditures.

[3] This statement accompanied the issuance of a FOIA memorandum to the heads of all Federal departments and agencies from Attorney General John Ashcroft on October 12, 2001. This memorandum emphasized the Bush Adminstration's commitment to full compliance with FOIA as an important means of maintaining an open and accountable system of government. At the same time, it recognized the importance of protecting the sensitive institutional, commercial, and personal interests that can be implicated in government records—such as the need to safeguard national security, to maintain law enforcement effectiveness, to respect business confidentiality, to protect internal agency deliberations, and to preserve personal privacy.

[4] Since September 11, 2001, the United States government has issued a total of four warnings—three official warnings and one unofficial warning. On October 11, 2001, Attorney General John Ashcroft issued the first official warning of possible attacks. He again issued an official warning on October 29, 2001. On December 3, 2001, Tom Ridge, Director of Homeland Security, issued the third official warning because Attorney General Ashcroft was out of town. This third warning, which was to be in effect throughout the holiday season, was extended on January 2, 2002 to last through March 11, 2002. As most relevant here, in late November 2001, Attorney General Ashcroft warned of an uncorroborated report of a possible terrorist threat against natural gas pipelines. Accordingly, the American Petroleum Institute, the lead industry group coordinating with the FBI and Energy Department on security matters, issued a warning to oil and gas companies.

[5] Two other FOIA requests were likewise mooted. One involved a request from a law firm representing a regulated company, which no longer had a particular map filed previously by its client. This request was handled outside of FOIA as it concerned a request from a company for its own material. The other request was made by an intervener in a certificate proceeding. In this case, the pipeline applicant provided the information directly to the requester.

[6] Section 154.106 requires each natural gas pipeline to display a system map in its tariff and to update its maps annually to reflect any major changes in facilities.

to keep the maps out of the public domain for safety purposes. Id. at __, slip op. at 2. The Commission further took into account that customers or prospective customers of Williston Basin will be able to obtain a copy of the map directly from the pipeline company. Id.

IV. Questions for Response

A. Legal Authority to Protect CEII

To reiterate, the Commission's goal is not to alter in any way the public's right to access documents that they need to participate in a meaningful way in Commission proceedings. For this reason, for example, the proposed location of new gas pipeline facilities would not be restricted from public access or involvement. Likewise, the Commission does not want to prevent the general public, including the press, from accessing information to understand better how the Commission operates. The Commission must balance these goals against legitimate concerns about the integrity of the nation's energy infrastructure. For this purpose, the Commission believes it is necessary to devise procedures for the public to access CEII. To do so, the Commission starts with the premise that any information it collects will generally be publicly available. That is consistent with the scheme of its enabling statutes, which are grounded in public participation in reviewing companies' rates and terms and conditions of service and in processing their certificate and license applications. See, e.g., section 4(c) of the Natural Gas Act, 15 U.S.C. 717c; section 205 of the Federal Power Act, 16 U.S.C. 824d. Nonetheless, the Commission's enabling statutes do not appear to prohibit the Commission from devising procedures to control the public's access to CEII. On the other hand, the Commission's regulations or policies may foreclose such procedures to the extent they require certain CEII to be made public and foreclose their being treated confidentially.

For example, there may be an anomaly in the Commission's maintaining the confidentiality of CEII, such as oversized, detailed system maps (which show not only the proposed facilities, but their relationship to existing facilities), but still requiring companies to maintain a public file of all relevant documents at a suitable location or locations outside of FERC. See 18 CFR 157.10. Similarly, the Commission requires pipeline applicants to make a good faith effort to place materials in a location that provides maximum accessibility to the public, and to make available complete copies of their applications in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. See 18 CFR 157.10(b)(2) and (c).

Under these circumstances, as a threshold matter, the Commission must decide whether any of its current regulations or policies need to be revised in order to implement changes in the way the public accesses CEII.[7] To assist this inquiry, the Commission is attaching to this Notice, as a non-public appendix, a list of previously public documents, which are likely candidates for consideration as CEII.[8] The Commission requests that respondents distinguish as much as possible in their answers between the legal implications for proposed projects versus operational projects. *See* B.4. below.

Against this backdrop, the Commission seeks responses to the following questions:

1. Are there statutory impediments to protecting CEII under the following:

a. Natural Gas Act, 15 U.S.C. 717, *et seq.*;

b. Federal Power Act, 16 U.S.C. 791a, *et seq.*;

c. FERC's other enabling statutes;

d. National Environmental Policy Act, 42 U.S.C. 4321–4370d; or

e. Substantive environmental laws?

2. Are there regulatory impediments to protecting CEII?

a. What changes, if any, are required to the Commission's own regulations to enable it to protect CEII adequately?

b. What changes, if any, are required to the Commission's regulations to enable regulated entities to protect CEII?

c. Are there non-FERC regulations that impair the Commission's or the regulated companies' ability to protect CEII adequately?

d. Do Order Nos. 608[9] and 609[10] create any impediment if the Commission defines CEII to include only information regarding licensed or certificated projects?

B. Definition of Critical Energy Infrastructure Information (CEII)

A major issue throughout the past three months has been identifying information that warrants protection in light of the September 11 events. After the issuance of the Policy Statement, the Commission removed from ready public access documents "that detail the specifications of energy facilities licensed or certificated under part I of the Federal Power Act * * * and section 7(c) of the Natural Gas Act. * * *" Since that time, the Commission has recognized that there may be additional information that warrants protection as well, for instance, information relating to the transmission of electricity. The Commission must develop a workable definition of CEII that is broad enough to encompass information useful to would-be terrorists in planning a terrorist attack, without removing from the public domain information that poses little to no risk. The definition will guide submitters of information and Commission staff reviewing such submissions in determining whether or not the information should be freely available to the general public.

Below is a list of questions that may assist the Commission in devising a consistent method of identifying CEII.

1. What are the primary considerations that the Commission should use to determine which information should be protected? Should the Commission only protect information relating to certain critical components of the infrastructure? If so, how does it identify such components? If information is removed only for those identified facilities, will that highlight critical facilities for would-be terrorists?

2. Should CEII include all information related to locations of existing facilities? Does the scale of the map make a difference? Should the Commission protect location information only where a map provides exact location of facilities (e.g., longitude and latitude, or map coordinates)? What if the information is otherwise publicly available from another source, e.g., a commercial map?

3. Aside from location, what additional types of information may warrant protection (i.e., removal from existing systems where possible, or redaction from future filings)?

a. Diameter, throughput and pressure information relating to gas pipelines?

b. System constraints for both gas and electric transmission systems?

c. Supply lines to critical facilities (hospitals, military installations, government facilities, etc.)?

d. Number of retail customers served by a particular portion of the infrastructure?

e. Redundancy or lack of redundancy in the system?

f. Compressor station layouts and layouts of other above-ground facilities?

g. Location of critical components, e.g. shut off valves?

h. Inundation information and other similar information that details areas likely to be affected by a failure in the system?

i. Vulnerability/risk assessments and other information that may provide insights into vulnerabilities in the infrastructure?

j. Emergency Action Plans or other documents detailing steps to be taken in the event of an emergency involving a facility?

4. Should the restrictions be limited to existing projects or should they be extended to proposed projects or extensions?

a. What are the legal impediments and practical difficulties associated with extending the restrictions to pending projects?

b. How should the Commission handle hydropower relicensing situations where there is a need for public participation, and

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[7] As separate matter, the Commission is aware of at least six pieces of legislation that have been introduced in the First Session of the 107th Congress, including S. 1407, S. 1456, S. 1529, S. 1534, H.R. 1292, and H.R. 1158. The Commission does not believe, however, that it needs a change in its legislative mandate to proceed with this Notice. That is not to stay, of course, that it would not welcome guidance from the Congress on these matters.

[8] The procedures to obtain a copy of the non-public appendix are set forth at the end of this Notice in the section entitled "Document Availability."

[9] "Collaborative Procedures for Energy Facility Applications," Order No. 608, 64 FR 51209 (September 22, 1999); FERC Statutes and Regulations, Regulations Preambles July 1996—December 2000, ¶ 31,080 (September 15, 1999), order on reh'g, Order No. 608–A, 65 FR 65752 (November 2, 2000); FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,110 (October 27, 2000).

[10] "Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements," Order No. 609, 64 FR 57374 (October 25, 1999), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,082 (October 13, 1999), order on reh'g, Order No. 609–A, 65 FR 15234 (March 22, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,095 (March 16, 2000).

also a risk that an existing facility could be endangered by release of certain information?

c. How should the Commission handle situations where documents relating to a yet-to-be-approved project contain CEII relating to existing facilities? Can those portions be removed and still permit effective public participation in the process? Is there an effective way to limit access to those with a need for the information?

d. If CEII related to proposed projects is not restricted during the licensing/certificate stage, at what point in the process should the information no longer be readily available to the public?

(1) Once the Commission issues the license/certificate?

(2) When a pipeline applicant accepts the certificate or when it commences construction?

(3) When a hydropower licensee or exemptee commences construction?

(4) After construction is completed, or any operational portion is completed?

(5) When rehearing period or appeal period has run or all rehearings or appeals have been decided?

C. Requester's Status and Need for the Information

At present, the Commission is considering an approach that would strive to process most requests for CEII outside of the FOIA process.[11] As part of this approach, requesters may be subject to different procedures and entitled to more or less information, depending on their status and their need for the information. The Commission has identified the following categories of potential requesters: (1) Federal government entities, including Congress; (2) state governments; (3) local governments; (4) Native American Tribes; (5) submitters of CEII; (6) parties seeking CEII relating to their own project or facility; (7) representatives of submitters or parties seeking information relating to their client's own project or facility; (8) interveners; (9) those who have sought, but have not yet been granted, intervener status; (10) landowners and landowner groups; (11) media representatives; (12) third-party requesters who want the information for a business purpose such as selling a product or service or advising clients of potential business opportunities; and (13) members of the general public. Below are some issues that must be considered if the Commission adopts an approach that takes a requester's status and need into account.

1. Should Federal requesters have ready access to CEII? If a Federal entity is given access where others involved in a case are not, are there ex parte concerns?

2. Should submitters of information be entitled to ready access to CEII regarding their own facilities? What about facility owners? Should it matter whether the information was submitted by the entity or created by the Commission?

3. Should interveners be afforded ready access to CEII? Should persons who have filed motions to intervene that have not been denied be granted the same access as interveners? If the Commission denies access to these requesters, has it effectively denied them an opportunity to participate in the matter? If the Commission grants ready access to CEII to interveners, do its intervener rules at 18 CFR 385.214 need to be revised to require a greater demonstration of interest than currently is required?

4. Should state governments be given ready access to CEII? There is statutory authority for the Commission to share information with state commissions in both the Natural Gas Act and the Federal Power Act. If a state government is given access where others are not, are there ex parte concerns?

5. Should affected landowners who have not intervened be granted access to CEII? If so, should those landowners be defined using the parameters found in existing regulations, such as 18 CFR 4.32(a)(3)(i)(A) and 157.6(d)(2)? If the current regulations contain no obligation to keep the landowner lists updated, how can the Commission later verify that a requester is still an affected landowner since property can be bought and sold at any time? If the Commission cannot craft a satisfactory method of verifying landowners' status, should non-intervener landowners follow the FOIA procedures in 18 CFR 388.108?

6. How should the Commission handle CEII requests from members of the press since it is highly unlikely that members of the press would be willing to abide by a non-disclosure agreement? If media requests cannot be handled under alternative procedures, should media representatives be directed to follow the FOIA procedures in 18 CFR 388.108?

7. How should the Commission treat other third party requesters that want the information for business purposes, e.g., consulting firms that may want the information to sell a product or service or to advise clients on potential business opportunities? Under those circumstances, the third party would be unlikely to enter into a non-disclosure agreement. If this is the case, should they be directed to follow the FOIA procedures in 18 CFR 388.108?

8. How should the Commission treat requests from a party in one proceeding to obtain information filed at the Commission by someone who is not a party in that particular proceeding?

D. Verification and Access Issues

If the Commission adopts a system where the identity of the requester, the status of the requester, and the requester's need for the information are relevant, the Commission must have a method of verifying the identity and status of the requester. The Commission currently uses an ID and password to verify the identify of filers who make electronic filings using the Internet. It may be possible to use a similar system to verify identities of requesters of CEII.

Another issue is whether the form of the request should be relevant in deciding to grant or deny access to CEII. Internet access seems to provide the broadest, easiest access to documents. Written requests for documents to be mailed to a street address provide an increased level of security because the recipient may be traceable through the address. Similarly, requiring a requester to appear in person at the Public Reference Room with identification provides some level of security as well. Questions relating to verification and access are listed below.

1. What type of system should the Commission use to verify that a requester is who he or she purports to be? Options include, among others, use of IDs and passwords, use of personal identification numbers, and use of digital signatures.

2. How should the Commission verify that a particular individual is authorized to request documents on behalf of an organization? Should the organization provide a list of authorized individuals to the Commission, perhaps as part of its intervention? Should the Commission issue the entity an ID and password and leave it up to the organization to determine which of its employees can have the password?

3. Should the level of verification required depend on how the requester is seeking to obtain the information? For example, should a higher level of verification be required when someone is accessing documents over the Internet than when they are filing a written request for the documents?

4. If the Commission eliminated all Internet access to CEII, would that be sufficient protection?

E. Non-disclosure Agreements and Limitations on Use of Information

One reason that the FOIA is not a useful vehicle for handling requests for CEII is that it does not permit the Commission to place any restrictions on the recipient's use or dissemination of the information. The Commission believes that disclosure of CEII should be restricted to those who have a legitimate need for the information, and that recipients should be under an obligation to protect the information from disclosure. The Commission is considering the extent to which non-disclosure agreements and agreements limiting the use of the CEII are appropriate, especially where the requester has an existing obligation or interest in protecting the CEII. In addition, the Commission is considering a recipient's obligation to dispose of CEII once it is no longer needed.

1. Should a facility applicant, owner, or operator be required to sign a non-disclosure agreement in order to access CEII regarding its own project, or is its interest in protecting the project sufficient to ensure that it will safeguard the information and only share it to the extent necessary?

2. Should representatives of facility owners, applicants, and operators (contractors, insurers, etc.) be required to sign non-disclosure agreements or use limitations as a prerequisite to receiving CEII? Should the Commission rely on the owner, applicant or operator to impose its own conditions on its representative's use and dissemination of the information?

3. Is it preferable for the Commission to direct the requester to negotiate with the submitter for the information wherever possible, or does it make more sense for the Commission to control the disclosure of the information?

[11] The Commission tentatively plans to add a new section to 18 CFR part 388, following the FOIA regulations.

4. Is it necessary to have another Federal agency representative sign a non-disclosure agreement in order to access CEII, or does 44 U.S.C. 3510(b) afford adequate assurance that the information will be handled appropriately? [12] Is there a need to restrict a Federal agency's ability to use CEII outside of the particular Commission proceeding?

5. Should state or local agencies be required to sign non-disclosure agreements as a prerequisite to receiving CEII? Is there a need to restrict the state or local agency's ability to use CEII outside of the particular Commission proceeding?

6. Should Native American Tribal representatives be required to sign non-disclosure agreements as a prerequisite to receiving CEII? Should Tribes' use of CEII be limited to the particular Commission proceeding?

7. Should interveners and those who have sought intervener status be required to sign non-disclosure agreements and use limitations as a prerequisite to receiving CEII?

8. Will media representatives sign non-disclosure agreements and use limitations? If not, should the Commission disseminate CEII to media requesters?

9. Will third party requesters who are seeking the information to sell a product or service or advise clients be willing to sign non-disclosure agreements and use limitations? If not, should the Commission disseminate CEII to such requesters?

F. Applicability of FOIA Exemptions

The Commission's intended approach on handling CEII is premised on the belief that CEII is exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, which gives any person the right to obtain Commission records unless the records are protected by an exemption or exclusion. Generally, records released to one requester under the FOIA must be released to all. Additionally, as discussed above, the FOIA does not allow restrictions to be placed on the recipient's use or dissemination of information released under the FOIA. The procedures contemplated above are intended to provide a process whereby the Commission can, on a limited basis, share otherwise exempt information with those with a legitimate need for the information. The fact that information is exempt from disclosure under FOIA usually will not prevent those with a need for the information from getting it, perhaps with limitations on use and disclosure ot the information.

There are nine exemptions and three law enforcement record exclusions under the FOIA.[13] In order to protect CEII from unlimited disclosure to anyone who requests it, the Commission must determine that the information is entitled to an exemption or is excluded from the FOIA. It is highly unlikely that an exclusion would apply to CEII. Of the nine exemptions, the Commission believes that the exemptions that are most likely to apply to CEII are Exemptions 2, 4, and 7(F). Exemption 2 protects from disclosure, documents "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. 552(b)(2). Attorney General John Ashcroft's October 12, 2001 memorandum to heads of departments and agencies states that "[a]ny agency assessment of, or statement regarding, the vulnerability of such a critical asset should be protected pursuant to Exemption 2," and continues that "a wide range of information can be withheld under Exemption 2's 'circumvention' aspect." Exemption 4 covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Exemption 7(F) exempts "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. 552(b)(7)(F). Case law has recognized that this may cover civil and administrative law enforcement as well as criminal law enforcement. Below is a list of issues that relate to the applicability of FOIA protection to CEII.

1. What types of documents are likely to contain CEII that would be exempt under Exemption 2?

2. Do regulated entities consider CEII to be exempt from disclosure under FOIA Exemption 4 ("trade secrets and commercial or financial information obtained from a person and privileged or confidential")?

3. Can regulated entities articulate likely competitive harm associated with the release of all or some categories of CEII?

4. If the Commission seeks to protect CEII as exempt from disclosure to the general public under FOIA Exemption 4, will the Trade Secrets Act, 18 U.S.C. 1905, limit the Commission's ability to make disclosure to select groups (e.g. interveners) that agree to limit use and dissemination of such information?

5. What types of documents containing CEII are compiled by the Commission for law enforcement purposes that could reasonably be expected to endanger the life or physical safety of individuals?

G. Submission of CEII to the Commission

The Commission must also determine what direction to give filers on how to identify and submit CEII in future filings. The Commission currently has provisions in 18 CFR 388.112 that specify hard copy and electronic media filing requirements for information for which privileged treatment is sought. At the present time, the Commission is not accepting Internet filing of any documents that require privileged or confidential treatment. See 18 CFR 385.2003(c)(3). We assume that at the time the Commission is prepared to accept such information over the Internet that CEII information will be included as well.

Generally, the rules in 18 CFR 388.112 require a filer to submit an unredacted, non-public version of a document as well as a redacted, public version of the same document. The disadvantage to the Commission of this approach is that it takes up more file or disk space because there often is significant overlap between the two documents. An alternative approach would be to permit filers to submit any CEII portions of their document as a separate non-public appendix or attachment to their public, non-redacted filing. This approach may be workable where there are only a few portions of a document that contain CEII, but seems less workable where CEII appears throughout a document. In that case, trying to get the full import of the document would be difficult because the reader would have to continually switch between the public filing and the non-public attachment.

1. Should filers submit CEII using the process in 18 CFR 388.112, i.e., submit a redacted public version and an unredacted non-public version?

2. Should filers be permitted or required to submit CEII as a separate non-public appendix or attachment to a public, non-redacted filing?

3. Should the Commission leave it to the filer's discretion which method to use to distinguish CEII from the public portions of the document?

4. What are the burdens, if any, to filers to any of the various approaches for segregating CEII from public information?

H. Challenges to CEII Status of a Document

Another issue is how to handle disputes with respect to the determination of whether a document contains CEII. Under the existing regulation at 18 CFR 388.112(d), a submitter is given an opportunity to explain why the document is entitled to non-public treatment. In the event that the Commission determines to release some or all of the information for which privileged treatment is sought, the submitter is notified prior to release as provided for in 18 CFR 388.112(e).

1. Are the procedures in § 388.112 effective for handling challenges to the CEII status of a document?

2. If a FOIA request is filed pursuant to 18 CFR 388.108, should the filer or submitter be given an opportunity to explain why the document is entitled to non-public treatment as provided for in 18 CFR 388.112 (d)?

3. If the Commission disagrees with the submitter's claim that the information is CEII, should the Commission provide notification prior to release as provided for in 18 CFR 388.112(e)?

4. Is a different process called for where there is no FOIA request filed, for instance where a Federal agency requests access to the information? What should the process be?

5. Is a different process called for where the Commission on its own initiative determines that the information is not entitled to CEII status? What should the process be?

I. Ex Parte Issues

The Administrative Procedures Act and the Commission's Rule 2201, 18 CFR 385.2201, restrict the Commission's ability to transmit or receive CEII off the record if it is relevant to the merits of a contested on-the-record

[12] 44 U.S.C. 3510(b) states that when one Federal agency receives information from another Federal agency, the employees of the recipient agency are subject to all provisions of law relating to unauthorized release of the information that apply to employees of their own agency, as well as those of the agency that supplied the information.

[13] Records that fall under an exclusion are not considered subject to FOIA, enabling an agency to state that there are no documents responsive to the FOIA request.

proceeding pending before the Commission. As identified below, issues may arise as to whether certain arrangements for sharing non-public CEII violate the ex parte rules.

1. As long as the Commission is willing to provide CEII to all participants who are willing to abide by use and disclosure restrictions, is there any ex parte concern?

2. Is it possible to share CEII with some entities (Federal agencies, for instance), and not share the same information with others (interveners, for instance)? Are there situations where this might be necessary? Should the entity receiving the information be required to agree not to intervene or file comments in the docket, thereby negating the possibility of the CEII being used to attempt to influence the outcome in the matter?

V. Guidance for Filings in the Interim

As noted, the Commission is using this opportunity to provide guidance to the companies whose facilities could be the targets of terrorist attacks with respect to the approach they may use in making filings with the Commission. Between now and the effective date of a final decision in Docket No. RM02–4, these companies may seek confidential treatment of filings or parts of filings which, in their opinion, contain critical energy infrastructure information (CEII). Granted, this Notice is intended to initiate the public debate as to what CEII means for the purpose of the Commission's regulatory responsibilities, so this guidance may seem to be jumping ahead of that debate. But in the interim, the Commission believes that the public will be better protected if companies whose existing facilities and operations are potentially in harm's way have the discretion to seek protection of information which, in their opinion, could increase the risk for those facilities and operations. For that purpose, companies are directed to follow the procedures in 18 CFR 388.112, and also clearly note "PL02–1" on the first page of the document.

The Commission recognizes that as a result of this guidance companies may seek confidential treatment of documents or parts of documents that would otherwise be readily available to all members of the public, either as a matter of practice or as a matter of law (specifically, a Commission regulation). Therefore, companies seeking confidential treatment of documents or parts of documents must include in their request for such treatment an explanation of why they believe the information warrants confidential treatment (as required by 18 CFR 385.112) and, if disclosure of the information is otherwise required to be public by regulation, they must also seek a waiver of the relevant regulation. Axiomatically, the Commission cannot by this guidance amend, without notice and comment, any of its regulations. As is the practice under 18 CFR 383.112, however, the Commission will honor all requests for confidential treatment, and make the information public only if someone else seeks the information and the Commission finds that information does not fit within an exemption under FOIA. Likewise, if the information would otherwise be required to be public by regulation, the Commission will maintain the non-public status of the information while it considers the waiver request, and make the information public only if it finds that a waiver is not warranted. Submitters are advised that, at present, the Commission is not protecting information related to proposed facilities prior to issuance of a certificate or license.

VI. Public Comment Procedure

The Commission invites interested persons to submit written responses on the matters and issues discussed in this Notice to be adopted, including any related matters or alternative proposals that respondents may wish to discuss. Responses are due March 11, 2002. Responses may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

To facilitate the Commission's review of the responses, respondents are requested to identify each specific question to which their response is directed and to correspond the responses to the outline in the Notice. Additional issues the respondents wish to raise should be identified separately. Respondents should double space their responses.

Responses may be filed on paper or electronically via the Internet. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such responses should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket Nos. RM02–4–000 and PL02–1–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on "Make An E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-Mail to *efiling@ferc.fed.us*. Responses should not be submitted to the e-Mail address.

Any person who uses the non-public appendix to respond to the questions in this Notice are directed to file two versions of the responses, a redacted public version and a non-redacted non-public version. The redacted version must exclude any reference to the particulars of the appendix, and will be made available to the public. The non-redacted version will be kept confidential. Persons are further directed to note plainly on their responses: "Redacted" and "Non-Redacted." Anyone referencing information from the non-public appendix must make a paper filing; the Commission currently is not accepting non-public (confidential, privileged or protected) filings electronically via the Internet.

Public versions of responses will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all public versions of responses may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-Mail to *rimsmaster@ferc.fed.us*.

VII. Document Availability

In addition to publishing the full text of this document (without the non-public appendix) in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document (without the non-public appendix) during normal business hours in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. (See below for the process to use to obtain a copy of the non-public appendix.) Additionally, responses may be viewed and printed remotely via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission's Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (*http://www.ferc.gov*) using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and Word Perfect 6.1. User assistance is available at (202) 208–0874 or e-mail to *cips.master@ferc.fed.us*.

The document (without the non-public appendix) is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via the Internet through FERC's Home Page using the RIMS link or Energy Information Online icon. User assistance is available at (202) 208–2222, or by e-mail to *rims.master@ferc.fed.us*.

Finally the complete text of the document (without the non-public appendix) on diskette in Word Perfect format may be purchased from the Commission's copy contractor, RVJ International, Inc., which is located in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The non-public appendix will be available subject to request and signing a non-disclosure statement. Specifically, any person who wants a copy of the non-public appendix must file a request for the appendix by February 7, 2002 with the Office of the Secretary. This request must explain the person's interest in the proceeding. The person wanting a copy of the non-public appendix must also sign a non-disclosure statement, which will limit the use of the appendix to responding to this Notice. Procedurally, the Office of the Secretary will transmit all requests for the non-public appendix to the Office of the General Counsel, General and Administrative Law, which will process the requests

expeditiously to enable timely responses to this Notice.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1614 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

RIN 1515–AC91

Single Entry for Split Shipments

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Customs is reopening the period of time within which comments may be submitted in response to the proposed rule providing for a single entry for split shipments, which was published in the **Federal Register** (66 FR 57688) on November 16, 2001. Specifically, the proposed rule would amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier, and which arrives in the United States separately. The proposed amendments would implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATES: Comments must be received on or before February 14, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations Branch, (202–927–1605).

SUPPLEMENTARY INFORMATION:

Background

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 1484 of the Tariff Act of 1930 (19 U.S.C. 1484), in pertinent part, by adding a new paragraph (j)(2) in order to provide for a single entry in the case of a shipment which is split at the initiative of the carrier and which arrives in the United States separately.

To implement section 1484(j)(2), by a document published in the **Federal Register** (66 57688) on November 16, 2001, Customs proposed to amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which is divided by the carrier into different parts which arrive in the United States at different times, often days apart.

Comments on the proposed rulemaking were to have been received on or before January 15, 2002. Customs has, however, received a request from a Customs broker to extend this period, the broker basically stating that it needed additional time in order to formulate its concerns and make appropriate comments. Customs believes, under the circumstances, that this request has merit. Accordingly, the period of time for the submission of comments is being reopened until February 14, 2002, as indicated above. It should be noted that no further extension of the comment period beyond this additional period will be granted.

Dated: January 15, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–1602 Filed 1–22–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 934]

RIN 1512–AC50

Proposed Addition of Tannat as a Grape Variety Name for American Wines (2001R–207P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is proposing to add a new name, "Tannat," to the list of prime grape variety names for use in designating American wines.

DATES: Written comments must be received by March 25, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 934).

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY, 14202–2301; Telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide "the consumer with adequate information as to the identity" of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and if the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. ATF believes the listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

ATF has received a petition proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a

published report by a professional, scientific or winegrowers' organization;

- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. A name will not be approved:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director reserves the authority to disapprove the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

Tannat Petition

Tablas Creek Vineyard in Paso Robles, California, has petitioned ATF proposing the addition of the name "Tannat" to the list of prime grape variety names approved for the designation of American wines. Tannat is a red varietal with origins in Southwestern France and the Pyrenees.

The petitioner has submitted the following published references to Tannat to establish its acceptance as a grape and the validity of its names:

- Cépages et Vignobles de France, Volume II, by Pierre Galet, 1990, p. 313.
- Catalogue of Selected Wine Grape Varieties and Clones Cultivated in France, published by the French Ministry of Agriculture, Fisheries and Food, 1997, p.151.
- Traité General de Viticulture Ampelographie, Volume II, by P. Viala and V. Vermoral, 1991, pp. 80–82.
- Guide to Wine Grapes, Oxford University Press, 1996, by Jancis Robinson, p. 182.

The first three references are scientific articles that discuss the grape's origin, cultivation, and ampelography (the study and classification of grapevines). "The Guide to Wine Grapes," intended for the general reader, contains a general description of the grape and its uses. According to these references, the Tannat grape produces a wine that is deeply colored and tannic, which is thought to account for its name. They also note its use as a major component of the French wine Madiran.

Tablas Creek Vineyard states that it imported the Tannat plant into the USDA station in Geneva, New York, in 1992. The plant was declared virus free in 1993 and shipped bare-root to Tablas Creek Vineyard in Paso Robles, California, in February 1993. In 1996, the winery multiplied, grafted and started planting Tannat.

The petitioner states that the Tannat grape is currently grown and used in the United States in winemaking. It reports that in 2000 and 2001, it shipped several orders for Tannat plants to vineyards in California, Arizona, and Virginia. Also, Tannat has long been grown in the vine collections of the University of California. At the request of the petitioner, Richard Hoenisch, Vineyard Manager, Viticulture and Enology Department, University of California at Davis, contacted ATF with information about Tannat's history in the university's collection.

According to Mr. Hoenisch, Tannat was part of the original vine collection of the University of California at Berkeley since the 1890's. Professor Eugene Hilgard, founder of the Department of Fruit Science, established several experimental vineyards in California, with sites in Berkeley, Cupertino, Paso Robles, and Jackson. Mr. Hoenisch states that the vines in the Jackson collection, including Tannat, were rediscovered in 1965 by Dr. Austin Goheen and Carl Luhn and repropagated at UC Davis. The university currently blends its Tannat wine into Cabernet Sauvignon to increase tannins, acidity, and color.

Tablas Creek states that Tannat has great commercial potential in California. The variety is easy to graft and relatively vigorous. It is well adapted to most California regions, ripening fairly late in the cycle, after Grenache but before Mourvédre and Cabernet Sauvignon. The petitioner reports that it has had two highly successful crops off its 0.5 acre planting. Its 1999 harvest had a brix of 28 and a pH of 3.18, while the 2000 harvest had a brix of 25 with a pH of 3.45. The petitioner states that the wine is rich, with good color and excellent aromatics and spice. Tablas Creek further reports that the wine has done well in tastings, resulting in additional orders for Tannat plants from other vineyards and nurseries.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

Can I Review Comments Received?

Copies of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment. A copy of this notice and all comments will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ × 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm.*

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of a new grape varietal name. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

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

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by adding the name "Tannat", in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Tannat

* * * * *

Signed: September 21, 2001.

Bradley A. Buckles,

Director.

Approved: December 12, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff & Trade Enforcement)

[FR Doc. 02–1661 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7126–2]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Idaho Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) proposes to approve the Idaho Department of Environmental Quality's (IDEQ) request for program approval and delegation of authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAPs) as they apply to major sources in Idaho required to obtain an operating permit under Title V of the federal Clean Air Act (CAA or Act). Pursuant to the authority of the section 112(l) of the Act, this proposal is based on EPA's finding that Idaho State Law, regulations, and resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for straight delegations common to all approval options, and in applicable EPA guidance.

If approved, this delegation will acknowledge IDEQ's ability to implement a NESHAP program and will transfer primary implementation and enforcement responsibility for certain NESHAPs from EPA to IDEQ for major sources. Although EPA would look to IDEQ as the lead for implementing delegated NESHAPs at major sources in Idaho, EPA would retain authority under 112(l)(7) to enforce any applicable emission standard or requirement for major sources. EPA would also retain authority to implement and enforce these standards for non-major sources. If approved, IDEQ may choose to request delegation of new and updated standards, or request broader applicability of their delegation to include non-Title V sources (major sources), by-way-of a streamlined process.

If approved, sources subject to delegated NESHAPs will send required notifications and reports to IDEQ for their action, and send a copy to EPA. Sources will continue to send notifications, reports, and requests required by authorities that are not delegated to IDEQ, to EPA, with a copy to IDEQ.

Concurrent with this proposed rule, EPA is publishing a direct final approval of Idaho's NESHAP delegation in the **Federal Register**. This is being published without prior proposal because the Agency views this delegation as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval as well as tables listing the specific NESHAPs delegated are 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 on the direct final rule, it will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by February 22, 2002.

ADDRESSES: Written comments should be addressed to Tracy Oliver, Office of Air Quality, at the EPA Regional Office listed below.

Copies of the state submittal are available at the following address for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

FOR FURTHER INFORMATION CONTACT: Tracy Oliver. Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1172.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Dated: December 13, 2001.

L. John Iari,

Regional Administrator, Region 10.

[FR Doc. 02–1120 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001–11068, Notice No. 2]

RIN 2130–AB39

Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who Are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comment on Even Broader Application of Rules and on Implementation Issues

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed rule; public hearing.

SUMMARY: FRA's regulation on the control of alcohol and drug use, which applies to all railroads that operate on the general railroad system of transportation in the United States, currently exempts certain operations by foreign railroads and certain small railroads from some of the regulation's requirements. On December 11, 2001 (66 FR 64000), FRA published a Notice of Proposed Rulemaking (NPRM) proposing to narrow the scope of these exemptions.

The NPRM also invites a discussion of alcohol and drug program implementation issues, and comment on whether FRA should expand the basis for requiring post-accident testing and testing for cause to include events that occur outside the United States. This notice announces the scheduling of a public hearing to allow interested parties the opportunity to comment on these issues.

DATES: *Public Hearing:* The date of the public hearing is Thursday, February 14, 2002, at 9 a.m. in Washington, DC. Any person wishing to participate in the public hearing should notify the Docket Clerk by telephone (202–493–6030) or by mail at the address provided below at least five working days prior to the date of the hearing and submit to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to Ms. Ivornette Lynch, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Ave., NW., Stop 10, Washington, DC 20590.

(2) *Public Hearing:* The public hearing will be held at 1120 Vermont Avenue, NW., Washington, DC 20005. The hearing room will be Room 1001A on the 10th floor. Attendees should first present an identification card with photograph (such as a current driver's license) to the security counter at the Federal Railroad Administration offices on the 7th floor, and follow security procedures as provided at that location.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313); or Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

Issued in Washington, DC, on January 16, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1637 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

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

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on February 7, 2002, at the Mt. Hood Room, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way, Portland, Oregon 97220. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan (NFP). The meeting will begin at 10:30 a.m. and continue until 4:00 p.m. Agenda items to be discussed include, but are not limited to: Monitoring strategies, REO/RMG Accomplishment Reporting, and rent court rulings related to the NFP. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request at least 10 days in advance of the meeting. Written comments may be submitted for the record at he meeting. Time for oral public comments has been scheduled. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding his meeting may be directed to Steve Odell, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, PO Box 3623, Portland, OR 97208 (Phone: 503–808–2166).

Dated: January 17, 2002.

Jay F. Watson,

Acting Executive Director/Designated Federal Official.

[FR Doc. 02–1710 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–Mx

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will hold its first meeting on Wednesday, February 13, 2002, at the Snohomish County Administration Building, Public Conference Room (4th Floor), 3000 Rockefeller Ave. in Everett, WA 98201.

The meeting will begin at 9 a.m. and continue until about 5 p.m. Agenda items to be covered include: (1) Background on the Secure Rural Schools and Community Self-Determination Act of 2000, (2) organization of the Snohomish County Resource Advisory Committee, and (3) future program of work, for the Snohomish County Resource Advisory Committee.

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: January 16, 2002.

Barbara Busse,

Designated Federal Official.

[FR Doc. 02–1596 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, February 18, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is to set Committee ground rules and goals, discuss teleconferencing opportunities and initial list of projects.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, February 18, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neal, CA, two and one half miles from State Highway 41.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext, 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Set committee ground rules and goals; (2) teleconferencing opportunities; (3) initial list of projects (4) public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 16, 2000.

David W. Martin,

District Ranger.

[FR Doc. 02–1597 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee will meet on February 6, 2002 in Brookings, Oregon at the Best Western Brookings Inn at 1143 Chetco Ave. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) An update from the Regional Ecosystem Office; (2) public comment; (3) a discussion of forest plan monitoring; and (4) current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: January 16, 2002.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 02–1595 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

AGENCY: Forest Service, USDA and Department of Interior.
ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement between the United States, on behalf of the U.S. Department of Interior and the U.S. Department of Agriculture, Forest Service and NL Industries, Inc. for the recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at and from the El Portal Barium Mine and Mill Site in El Portal, Mariposa County, California. Under the proposed settlement, NL Industries will pay $190,000 to the US Department of Interior's Central Hazardous Materials Fund and $85,000 to the U.S. Department of Agriculture, Forest Service.

DATES: Comments must be received, in writing, on or before February 22, 2002.

ADDRESSES: Written comments on this proposed settlement agreement may be sent to: both James E. Alexander, USDA Office of General Counsel, Room 1734 Federal Building, 1220 SW 3rd Avenue, Portland, Oregon 97224 and Shawn P. Mulligan, National Park Service, 1050 Walnut Street, Suite 220, Boulder, Colorado 80302 and should refer to the El Portal Barium Mine and Mill site, El Portal, Mariposa County, California. A copy of the proposed settlement agreement may be obtained by mail from Mary Grove, USDA Office of General Counsel, Room 1734 Federal Building, 1220 SW 3rd Avenue, Portland, Oregon 97224.

Dated: January 14, 2002.

Jack A. Blackwell,

Regional Forester, USDA Forest Service, Region 5.

[FR Doc. 02–1445 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Loan Program

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice of funds availability.

SUMMARY: This is to notify interested parties that, during the current fiscal year (FY) 2002, $80 million is available for loans in the Broadband Pilot Loan Program administered by the Rural Utilities Service (RUS). This is a continuation of the Broadband Pilot Loan Program initiated by RUS during FY 2001 to finance the construction of facilities and systems providing broadband transmission service to rural consumers. The program provides financing for facilities serving rural communities of up to 20,000 inhabitants so that rural consumers in those areas may enjoy the same quality and range of telecommunications services as are available in urban and suburban communities. This notice describes the eligibility and application requirements and the criteria RUS will consider in evaluating applications for broadband loans.

RUS currently has applications for broadband loans, submitted in response to the FY 2001 Broadband Pilot Loan Program, in excess of $350 million. Before accepting new applications, RUS will act on those completed applications currently pending. RUS currently has completed applications in the aggregate amount of $150 million. RUS anticipates that the FY 2002 lending authority will be fully committed after it has acted on those completed applications. However, should FY 2002 loan authority remain available thereafter, RUS shall publish a notice advising interested parties that it is accepting additional applications.

DATES: New applications will be accepted only if, after processing all pending completed applications, RUS publishes an additional notice announcing that loan funds remain available. See discussion below.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Information Collection and Recordkeeping Requirements

This notice contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) because RUS has already received all information required for analysis of the loans to be considered under this notice.

General Information

During FY 2002, $80 million will be made available for loans for the construction of facilities and systems to provide broadband transmission services in rural areas. The Broadband Pilot program is authorized by 7 U.S.C. 950aaa and the Agriculture Appropriations Act, 2002, Public Law 107–76 and is a continuation of the Broadband Pilot Loan Program initiated by RUS during FY 2001 pursuant to a NOFA published December 5, 2000, 65 FR 75920 (Initial NOFA).

The Initial NOFA announced that $100 million in loan funds would be available during FY 2001 on a first-come, first-served basis. The queue for considering and approving loans was established by the date on which the application was determined to be complete by RUS. During FY 2001, RUS approved for funding 12 applications totaling $100 million dollars. RUS currently has pending completed applications for broadband loans, submitted in response to the Initial

NOFA, in the aggregate amount of $150 million.

Except as discussed below under "Response to Terrorist Events," before accepting new applications for broadband loans, RUS will act on those completed applications it currently has pending based on the date on which RUS determined the application to be complete. Should loan funds remain available thereafter, RUS will publish a notice advising interested parties that it is accepting additional applications.

Drawing on experience gained in reviewing applications over the past year, this notice restates, clarifies, and provides additional information regarding the eligibility and application requirements and criteria RUS will consider in evaluating applications under the Broadband Pilot Loan Program.

After the $80 million provided for in this NOFA is committed, RUS will return any remaining loan applications to their respective applicants. Should financing beyond the $80 million become available for broadband transmission services, RUS will, by separate notice, announce the eligibility and application requirements, priority criterion and approval standards.

Agency Contacts

Applications from: Alabama, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Puerto Rico, Virgin Islands: Mr. Kenneth Kuchno, Director, Eastern Area, Telecommunications, Rural Utilities Service, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673.

Applications from: Alaska, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Washington, Wyoming: Mr. Jerry Brent, Director, Northwest Area, Telecommunications, Rural Utilities Service, STOP 1595, 1400 Independence Avenue, SW., Washington, DC 20250–1595, Telephone (202) 720–1025.

Applications from: Arizona, Arkansas, California, Colorado, Hawaii, Kansas, Louisiana, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, American Samoa, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, Commonwealth of the Northern Marianas Islands: Mr. Ken Chandler, Director, Southwest Area, Telecommunications, Rural Utilities Service, STOP 1597, 1400 Independence Avenue, SW., Washington, DC 20250–1597, Telephone (202) 720–0800.

Definitions

As used in this notice:

Bandwidth means the capacity of the radio frequency band or physical facility needed to carry the broadband transmission services.

Broadband transmission services means providing an information rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Eligible applicant shall have the meaning set forth in that paragraph entitled "Eligible Applicant."

Eligible loan purposes shall have the meaning set forth in that paragraph entitled "Eligible Loan Purposes."

Loan design shall have the meaning set forth in the paragraph entitled "Loan Design."

Rural areas means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Spectrum means a defined band of frequencies that will accommodate the broadband transmission services.

Eligible Applicant

To be eligible for a loan, the applicant must meet the following conditions:

(1) The applicant must be a public body; an Indian tribe; a cooperative, nonprofit, limited dividend, or mutual association; an incorporated or limited liability company; or other legally organized entity. The applicant may not be an individual or a partnership.

(2) The applicant must have the legal authority to own and operate the broadband facilities, to enter into contracts, to borrow funds, provide security, and otherwise comply with applicable federal statutes and regulations.

Eligible Loan Purposes

Loans may be approved to finance the improvement, expansion, construction, acquisition and operation of facilities or systems to furnish or improve broadband transmission service in rural areas subject to the following:

(1) Loans may be approved to finance the acquisition of operating lines and facilities only if the acquisition is necessary to furnish or improve broadband transmission service in rural areas;

(2) Loans may be approved to finance the lease or purchase of spectrum rights and bandwidth necessary to provide the broadband transmission services;

(3) Loans may not be approved to finance operating expenses except in limited circumstances, such as for the initial operation of a new system, where RUS determines such financing will enhance feasibility of the loan and no other source of financing is available; and

(4) Loans may not be approved to finance the duplication of existing adequate broadband transmission services provided by others.

Minimum Loan Amount

Loans under this authority will not be made for less than $100,000.

Loan Terms

Loans shall bear interest based on the United States Treasury rate for loans with comparable maturities and shall be repaid with interest within a period, not to exceed 10 years, that approximates the expected useful life of the facilities financed.

Application

Except as set forth below under "Response to Terrorist Events," RUS processes applications for loans for broadband transmission services on a first-come, first-served basis determined by the date on which the applicant submitted a completed application.

A completed application must include the following documentation, studies, reports and information satisfactory to RUS:

(1) Completed Standard Form 424, "Application for Federal Assistance."

(2) Evidence that applicant is an eligible applicant.

(3) A loan design.

(4) Evidence that the proposed project will not result in the duplication of existing facilities providing adequate broadband transmission service.

(5) Description of the qualifications of applicant's management and key employees including relevant training and work experience.

(6) Financial feasibility studies, as described below.

(7) Proposed security arrangements for the loan.

(8) An environmental report on the project.

(9) Evidence that the applicant and the project will be in compliance with applicable laws.

Upon receipt, RUS reviews an application to determine whether the application is complete. If RUS determines that an application is not complete, it advises the applicant of requirements that must be met. Upon determining that the application is

complete, RUS assigns an application completion date which establishes the order of the application in the loan queue with the earliest application completion dates evaluated first. A determination that an application is complete is not a commitment to approve the application. Applicants are advised in writing of their respective application completion dates and the availability of loan funds.

As of the date of this notice, RUS has a loan queue of completed applications in an aggregate amount well in excess of FY 2002 lending authority. Consequently, RUS is not now accepting additional applications.

Loan Design

A Loan Design should contain the following, satisfactory to RUS:

(1) A narrative discussing the proposed broadband transmission project including the costs of the project, all existing and proposed facilities that are a part of the project, the services to be provided by the project, the proposed service area, and the basis for subscriber forecasts;

(2) Engineering design studies providing an economical and practical engineering design for construction of the applicant's broadband project that includes a detailed description of the facilities to be funded and setting forth technical specifications, data rates, and costs;

(3) A map of the proposed service area reflecting the location of facilities and systems providing similar broadband services owned and operated by other entities; and

(4) Subscriber forecasts and supporting documentation including market surveys.

Feasibility Study

RUS will approve a loan only if, in RUS' sole judgment, the loan will be repaid according to its terms within the time agreed. The applicant must provide RUS with studies, satisfactory to RUS, addressing the financial feasibility of the broadband project. The applicant should include in its application:

(1) Financial statements of the applicant for the last three years or for so long as the applicant has been in business if the applicant has not been in business for three years;

(2) A loan budget showing all costs of the proposed project and the amount of loan and nonloan funds to be used;

(3) A pro-forma five-year financial forecast including all revenues and expenses for the five-year period, a subscriber penetration forecast, and a detailed description of all associated assumptions;

(4) Depreciation rates for the equipment being financed; and

(5) Such additional information relating to financial feasibility as the borrower may choose to include after consulting with RUS.

Loan Security

RUS will approve a loan only if, in RUS' sole judgment, the security therefore is reasonably adequate. Generally, RUS requires as security a first lien on all of the real and personal property that is part of the project financed by the loan, including any additional property relating to the project acquired after the date of the loan. RUS may require additional security, including, without limitation, a first lien on all real and personal property of applicant, and pledges of stock or other ownership interests in the applicant. RUS may also require that the applicant provide equity as a part of project or system financing.

RUS loan documents set forth additional requirements on the applicant with respect to providing and maintaining security including operational, financial, and investment covenants and controls.

Approval Criteria

RUS will consider, for approval, completed applications on a first-come, first-served basis as discussed above under "Application". In order to approve a loan, RUS must determine that the application satisfies the following criteria:

(1) The project will provide broadband transmission services in rural areas in an efficient and economical manner;

(2) Loan funds will be used for eligible loan purposes;

(3) The applicant has the necessary expertise and experience to successfully complete and operate the project;

(4) The project is financially feasible and the loan will be repaid according to its terms;

(5) The security for the loan is reasonably adequate; and

(6) The applicant and the project will be in compliance with applicable laws.

If RUS concludes that the application satisfies the above criteria, RUS may approve the application, in whole or part, and prescribe terms and conditions applicable to the loan.

The applicant will be advised in writing of RUS loan approval and the expected timetable for delivery of loan documents for execution by the borrower.

If RUS does not approve the application, RUS will so advise the applicant in writing.

Loan Documents

The terms and conditions of loans shall be set forth in loan documents prepared by RUS. On request, RUS will provide applicants with examples of notes, loan agreements, and security instruments developed for use in the Broadband Pilot Loan Program. However, the terms and conditions of each loan shall be determined on a case-by-case basis.

Among other matters, RUS may prescribe conditions to the advance of funds that address concerns regarding the feasibility of and the security for the loan. RUS may also prescribe terms and conditions applicable to the construction and operation of the project and the delivery of broadband transmission services to rural areas.

Other Federal Statutes and Regulations

Loan applications will be required to demonstrate compliance with all applicable federal statutes and regulations, including, among others, those relating to nondiscrimination in federally assisted programs, government wide debarment and suspension (non-procurement), government wide requirements for drug-free workplace, restrictions on lobbying, audits, architectural barriers, flood hazard precautions, and delinquent debt.

Applicants should contact the appropriate office identified above under "Agency Contacts" for additional information regarding any federal statutes and regulations which may apply to the project covered by the application.

Response to Terrorist Events

Current RUS borrowers are advised that section 770 of FY 2002 Appropriations Act, Public Law 107–76, provides as follows:

Notwithstanding any other provision of law, from the funds appropriated to the Rural Utilities Service by this Act, any current Rural Utilities Service borrower within 100 miles of New York City shall be eligible for additional financing, refinancing, collateral flexibility, and deferrals on an expedited basis without regard to population limitations for any financially feasible telecommunications, energy or water project that assists endeavors related to the rehabilitation, prevention, relocation, site preparation, or relief efforts resulting from the terrorist events of September 11, 2001.

Current borrowers qualifying under section 770 should contact the appropriate office identified above under "Agency Contacts" for additional information.

Dated: January 11, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1666 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 23, 2002.

SUMMARY: The Department of Commerce is extending the time limit for completion of the preliminary results of the administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The period of review is May 1, 2000, through April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood at (202) 482–0656 or (202) 482–3874, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

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

SUPPLEMENTARY INFORMATION: On June 19, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The period of review is May 1, 2000, through April 30, 2001. The review covers two producers/exporters of the subject merchandise to the United States.

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. This review involves a number of complicated cost issues. As a result, we need additional time for our analysis. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results. Consequently, we have extended the deadline until May 31, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)(2000)) and 19 CFR 351.213(h)(2).

Dated: January 16, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–1658 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: January 23, 2002.

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

Final Determination

The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from France. We determine that stainless steel bar from France is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from France. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

The Applicable Statute

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

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From France,* 66 FR 40201 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Aubert & Duval S.A. ("A&D") and Ugine-Savoie Imphy S.A. ("U–SI"). On August 28, 2001, A&D notified the Department that it was no longer participating in this investigation. We issued U–SI's verification report on October 25, 2001. See "Verification" section of this notice for further discussion.

On November 27, 2001, U–SI submitted revised sales and cost databases pursuant to verification findings and to the Department's November 13, 2001, request.

The petitioners [1] and respondent filed case and rebuttal briefs in November 2001. A public hearing was held at the request of the petitioners on December 6, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11. 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

[1] The petitioners in this case are Carpenter Technology Corp., Crucible Speciality Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determinations in these investigations, the respondent in this and the companion stainless steel bar ("SSB") investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel ("SQOFES"), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. For details, see the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation."

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES, and with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") is October 1, 1999, through September 31, 2000.

Facts Available

In the *Preliminary Determination*, the Department determined that facts available was warranted in accordance with section 776(a) of the Act to calculate the dumping margin for the respondent A&D. Therefore, for the preliminary determination A&D's dumping margin was based on the simple average of the margins contained in the petition. The use of facts available was required because although A&D responded to the Department's questionnaires, it did not provide usable data for purposes of our preliminary margin analysis. *See Preliminary Determination*, 66 FR at 40201 (August 2, 2001).

Since the preliminary determination and prior to the verification of A&D's home market data, A&D notified the Department of its withdrawal from participation in this investigation.[2] section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the {Department} under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the {Department} shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case under section 776(a)(2)(C) and (D) of the Act because A&D failed to allow the Department to verify its data, thereby significantly impeding the proceeding.

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. A&D decided to withdraw its participation in this investigation, thereby precluding the Department from verifying its data. On this basis the Department determined that it failed to cooperate by not acting to the best of its ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned A&D an antidumping rate based on adverse inferences.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From*

Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907, 25908 (May 4, 2000); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847, 10848 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 40433 (July 29, 1998). In accordance with our stated practice, in this case we applied to A&D the highest margin in the notice of initiation which was based on the petition.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In this case, when analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margins for purposes of using them as adverse facts available, we examined the price and cost information provided in the petition when making our preliminary determination. For further details, see Memorandum to Louis Apple from The Team entitled "Preliminary Determination of Stainless Steel Bar from France: Use of Facts Available and Corroboration of Petition Margins," dated July 26, 2001. Since the preliminary determination, we have received no additional information which would cause us to reconsider whether the information in the petition has probative value. Therefore, we have continued to find in the final determination that the rates contained in the petition have probative value.

In accordance with Section 776(c) of the Act, we were able to corroborate the information in the petition using information from independent sources that were reasonably at our disposal. As a result, we are assigning A&D the highest margin contained in the petition, 71.83 percent, for purposes of the final determination.

Fair Value Comparisons

To determine whether sales of stainless steel bar from France to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the January 15, 2002, Decision Memorandum, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Constructed Export Price

For all sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the same methodologies described in the *Preliminary Determination*, with the following exception:

- We treated the technical service expense as an indirect rather than as a direct selling expense.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production and NV, with the following exceptions:

Calculation of NV

- We determined that although there are but two levels of trade ("LOT") in the home market, each of those LOTs were different from the U.S. LOT. Therefore, we granted a CEP offset.
- We treated expenses incurred by a home market affiliate, which acted as a commission agent, as indirect selling expenses rather than direct selling expenses.
- We recalculated home market warranty expenses on a customer-specific basis rather than on a general-product basis and treated both the respondent and its affiliate's home market warranty expenses as direct selling expenses.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion SSB investigations from Germany, Italy, Korea, Taiwan, and the United Kingdom, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (comparing verification to an audit). The courts concur that verification is a spot check and it is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (CAFC 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned in certain SSB cases, verification was conducted as scheduled in this SSB proceeding.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we

have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of SSB from France that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions will remain in effect until further notice. The weighted-average dumping margins for this LTFV proceeding are as follows:

Exporter/manufacturer	Margin percentage
Aubert & Duval, S.A.	71.83
Ugine-Savoie Imphy, S.A.	3.90
All Others*	3.90

*Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis*, or determined entirely on facts available.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Whether to Collapse the Sales Prices and Production Costs of two Affiliates Across Countries
2. Defining Foreign Like Product for Making Product Comparisons
3. Ranking "Peeled and Descaled" as a Final Finish Characteristic
4. Assigning Total Facts Available
5. Calculating the Dumping Margin
6. Level of Trade
7. Home Market Expenses Reported In Lieu of Commissions
8. Treatment of Movement and Selling Expenses Between Home Market Affiliates as Manufacturing Costs
9. Home Market Warranty Expenses
10. Treatment of UFS/U–SF's Restructuring Costs as Selling Expenses
11. U.S. Credit Expenses for Consignment Sales
12. Whether to Include Freight Revenue in Calculation Formulas Used to Report Certain U.S. Discounts and Expenses
13. Treatment of the French Tax Provision

[FR Doc. 02–1651 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom

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

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from the United Kingdom. We determine that stainless steel bar from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from the United Kingdom. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation*."

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from the United Kingdom*, 66 FR 40214 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

On August 24, 27, and September 4, 2001, we received requests for a public hearing from Firth Rixson Special Steels Limited ("FRSS"), Corus Engineering Steels Ltd. ("Corus") and the petitioners, respectively. We conducted verification of Corus's questionnaire responses during the period September through November 2001. *See* "Verification" section of this notice for further discussion. On November 2, 2001, we received a case brief from Valkia Ltd. ("Valkia") in response to a letter issued by the Department on October 19, 2001. Corus submitted revised sales and cost data pursuant to verification findings on November 30, 2001.

The petitioners and FRSS filed case briefs on December 7, 2001. The petitioners and Corus filed rebuttal

briefs on December 13, 2001. A public hearing was held on December 14, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Use of Facts Available

In the *Preliminary Determination*, we based Crownridge's and FRSS's antidumping duty rates on the facts otherwise available, in accordance with section 776(a)(2)(A) and (B) of the Act, respectively. *See also* the Memorandum to Richard W. Moreland from Louis Apple entitled "Preliminary Determination of Stainless Steel Bar (SSB) from the United Kingdom: Use of Facts Available," dated July 26, 2001 (*Facts Available Memorandum*).

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Crownridge did not respond to the antidumping questionnaire. In the preliminary determination, we determined that it was appropriate to assign Crownridge a margin based on facts available (*i.e.*, the all others rate), rather than on adverse facts available, because the information on the record at that time indicated that it was unable to provide a response. We have changed this determination based on information placed on the record since the preliminary determination, indicating that Crownridge (now operating as Valkia) could have responded to the Department's questionnaire and that it provided misleading information during our investigation. Consequently, we find that Crownridge/Valkia failed to act to the best of its ability to comply with a request for information, and a margin based on adverse facts available is warranted. This issue is addressed in further detail in *Comment 2* of the January 15, 2002 *Decision Memorandum*.

As explained in the *Preliminary Determination*, FRSS withheld or failed to provide the data required to perform the antidumping duty calculations, despite ample opportunity to do so. On this basis we determined that FRSS failed to cooperate by not acting to the best of its ability in this investigation, and the application of a dumping rate based on adverse inferences is warranted. This issue is addressed in further detail in *Comment 1* of the January 15, 2002, *Decision Memorandum*.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 10826, 10847 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 40433 (July 29, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In this case, when analyzing the petition for purposes of the initiation, we reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. For the preliminary determination, in order to corroborate the petition margins for purposes of using them as adverse facts available, we re-examined the price and cost information provided in the petition in light of information developed during the investigation. *See* the *Facts Available Memorandum* for further details of our corroboration methodology. Since the preliminary determination, we have received no additional information which would cause us to reconsider whether the information in the petition has probative value. Therefore, we have continued to find in the final determination that the rates contained in the petition have probative value.

As we noted in the *Preliminary Determination*, in accordance with section 776(c) of the Act, we were able to corroborate the information in the petition using information from independent sources that were reasonably at our disposal. As a result, we have assigned to Crownridge/Valkia and FRSS the highest rate contained in the petition, 125.77 percent, for purposes of the final determination. *See Comment 1* and *Comment 2* of the January 15, 2002 *Decision Memorandum*.

Fair Value Comparisons

With respect to Corus, to determine whether sales of stainless steel bar from The United Kingdom to the United States were made at less than fair value, we compared constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below, and in the January 15, 2002, *Decision Memorandum* and Memorandum from Taija A. Slaughter to Neal A. Halper (*Calculation Memo*), which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Constructed Export Price

For sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

We based the final margin calculations on databases provided by Corus since the *Preliminary Determination*, containing corrections to various clerical errors related to Corus's reported sales expense fields, resulting from verification. *See* the November 30, 2001 verification reports on file in room B–099 of the Commerce Department.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

We based the cost of production analysis on a database provided by Corus since the *Preliminary Determination* reflecting minor corrections resulting from verification. *See* the November 9, 2001 verification report on file in room B–099 of the Commerce Department. We also revised Corus's reported general and administrative expenses to include an amount for restructuring costs. *See* Corus's *Comment 1* in the January 15, 2002, *Decision Memorandum* and the *Calculation Memo* for further details of this adjustment.

2. Calculation of NV

We calculated NV based on the same methodologies described in the *Preliminary Determination*, using a database provided by Corus since the *Preliminary Determination*, reflecting minor corrections to Corus's home market sales expense fields, resulting from verification. *See* the November 9, 2001 verification report on file in room B–099 of the Commerce Department. We deducted various discounts, rebates, movement expenses, direct selling expenses, and packing cost from the reported gross unit price, which were inadvertently not included in the calculation of NV in the preliminary determination. We also corrected an error with respect to the weight-averaging of net home market price.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion SSB investigations from Germany, France, Italy, Korea and Taiwan, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for

these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States,* 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States,* 698 F.Supp. 275, 281 (C.I.T. 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States,* 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2001, *Decision Memorandum,* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/frnhome.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Corus Engineering Steels, Ltd.	4.48
Crownridge Stainless Steel, Ltd.	125.77
Firth Rixson Special Steels, Ltd.	125.77
All Others*	4.48

*Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or de minimis, or determined entirely on facts available.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

1. Facts Available Margin for FRSS
2. Facts Available Margin for Crownridge/Valkia

Corus Issues

3. Restructuring Costs
4. Redundancy Expenses
5. Allocation of Parent Company G&A Expenses
6. Calculation of U.S. Credit Expense
7. Assignment of Product Control Numbers
8. Corus's Comparison Hierarchy
9. CEP Offset Adjustment
10. Treatment of Negative Margin Sales
11. Calculation of NV

[FR Doc. 02–1652 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–847]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea

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

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Korea. We determine that stainless steel bar from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Korea.

Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Korea*, 66 FR 40222 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Changwon Specialty Steel Co., Ltd. ("Changwon") and Dongbang Industrial Co. Ltd., ("Dongbang") (collectively, "the respondents"). In October 2001, the respondents submitted revised sales and cost databases pursuant to verification findings at the Department's request. We issued verification reports in November 2001. *See* "Verification" section of this notice for further discussion.

The petitioners [1] and the respondents filed case and rebuttal briefs, respectively, on November 16 and November 27, 2001. All parties withdrew their request for a hearing on November 28, 2001.

Although the deadline for this determination was originally December 16, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in the companion stainless steel bar investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel ("SQOFES"), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these stainless steel bar investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from stainless steel bar. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

[1] The petitioners in this case (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America)

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Korea to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below, and in the January 15, 2002 *Decision Memorandum* and each individual respondent's calculation memorandum, which are on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

Changwon

We accepted Changwon's revised U.S. sales listing pursuant to verification findings. Specifically, we accepted the correction to Changwon's U.S. short-term interest rate and imputed credit calculations, and allowed certain duty drawback adjustments to be made to the U.S. sales listing. We accepted the adjustment to the direct selling expense ratio applicable to Changwon's affiliate, POSTEEL. We also corrected a ministerial error by reclassifying sales through Changwon's U.S. affiliate, POSAM, as CEP sales, consistent with our preliminary and final determinations.

Dongbang

We accepted Dongbang's revised U.S. sales listing pursuant to verification findings. Specifically, we accepted the adjustments to duty drawback and the corrections to the inventory carrying cost calculations.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Changwon

We disallowed Changwon's claimed offset for gains on marketable securities to its reported general and administrative ("G&A") expenses. We further adjusted Changwon's G&A rate by recalculating Changwon's reported cost of goods sold value exclusive of packing.

Dongbang

Pursuant to verification findings, we accepted Dongbang's corrections to its COP and constructed value ("CV") databases to adjust for Dongbang's over-allocation of the amount of scrap revenue offset against its raw material costs. We accepted Dongbang's G&A amount to remove the total amount of scrap revenue that was included both as an offset to raw material cost and as part of Dongbang's reported G&A expenses. We adjusted Dongbang's recalculation of its affiliated supplier's G&A and interest expense used in the calculation of COP based on fiscal year 2000 amounts (rather than fiscal year 1999) pursuant to verification findings. Using Dongbang's affiliated supplier's recalculated COP, we revised our major-input analysis of Dongbang's raw material cost to reflect, on a grade-specific basis, the highest of COP, transfer price, or when available, market price. We made an adjustment to the costs reported for certain products sold but not produced during the POI.

2. Calculation of NV

Changwon

Pursuant to verification findings, we accepted Changwon's exclusion of the sales of billets from its home market sales listing because billets are raw materials used to produce the subject merchandise (*i.e.*, stainless steel bars). We also accepted Changwon's correction of clerical errors presented at the onset of verification, namely the corrections to Changwon's interest revenue, warranty and inland freight calculations. We corrected for ministerial errors identified after the preliminary determination. Specifically, we adjusted the preliminary margin calculation by adding (rather than deducting) interest revenue to NV and correcting an error with respect to home market credit expenses which were inadvertently set to zero. We added (rather than deducted) the cost of U.S. packing to NV. We also made an additional correction to account for the omitted duty drawback adjustment related to local export sales.

Dongbang

We accepted the correction Dongbang presented at the onset of verification, namely a correction to Dongbang's home market interest rate used to calculate imputed credit. We adjusted Dongbang's calculation of its indirect selling expense ratio based on verification findings. We corrected for a ministerial error identified after the preliminary determination by adding (rather than deducting) the cost of U.S. packing to NV in the final determination.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination.*

Verification

In this investigation, and in the companion stainless steel bar investigations from Germany, France, Italy, the United Kingdom and Taiwan, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the events of September 11, we were unable to complete all scheduled verifications in these cases. Specifically, in the Korean investigation, we were unable to verify the information relating to Changwon's U.S. affiliate, POSAM. However, for those companies that we were unable to verify on site, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States,* 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States,* 698 F.Supp. 275, 281 (Ct. Int'l Trade 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech.,* Inc. v. *United States,* 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in these final determinations, despite our inability to complete the

verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2001, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of stainless steel bar from Korea that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Changwon Specialty Steel Co., Ltd	13.38
Dongbang Industrial Co., Ltd	4.75
All Others Rate	11.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

Common Issues

Comment 1: Product Characteristics and Matching Methodology
Comment 2: Duty Drawback
Comment 3: Application of the Major Input Rule
Comment 4: Ministerial Errors

Company Specific Issues

Changwon Specialty Steel Co., Ltd.

Comment 5: Treatment of Changwon's U.S. Sales Made Through POSTEEL's U.S. affiliate
Comment 6: Whether to Grant a Constructed Export Price ("CEP") Offset Adjustment for Changwon's CEP Sales
Comment 7: Interest Rate Selection
Comment 8: General & Administrative ("G&A") Expenses
Comment 9: Denominator Used to Calculate G&A and Interest Ratios

Dongbang Industrial Co., Ltd.

Comment 10: Treatment of Class II Stainless Steel Bar
Comment 11: Selection of Cost for Products Which Were not Produced but Sold During the POI

[FR Doc. 02–1653 Filed 1–22–02; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–836]

Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar From Taiwan

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

ACTION: Notice of final determination.

SUMMARY: We determine that stainless steel bar from Taiwan is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at not less than fair value of stainless steel bar from Taiwan. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. However, this final determination does not differ from the preliminary determination, in which we found that the respondent did not make sales in the United States at prices below normal value.

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Annika O'Hara, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207 and (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

The preliminary determination in this investigation was issued on July 26, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Taiwan*, 66 FR 40198 (August 2, 2001) ("*Preliminary Determination*"). Since the *Preliminary Determination*, the following events have occurred:

On July 27, 2001, the Department solicited additional information from the respondent Gloria Material Technology Corporation, ("Gloria"). On August 6, 2001, we received a response, including revised cost of production ("COP") and constructed value ("CV") databases.

Verification of the response submitted by Gloria took place from August 12 through 23, 2001 (*see* the "Verification" section below).

On November 14, 2001, the petitioners in this case (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America) and Gloria submitted case briefs. The petitioners and Gloria submitted rebuttal briefs on November 19, 2001. At the request of the petitioners, the Department held a public hearing on November 28, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondent in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES which the Department disagrees with and has addressed in the January 15, 2002, *Decision Memorandum* in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary scope decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of this investigation ("POI") is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Taiwan to the United States were made at less than fair value, we compared export price ("EP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the *Final Determination Calculations for Gloria Material Technology Corporation and Golden Win Steel Corporation ("Golden Win")* Memorandum dated January 15, 2002 ("Calculation Memorandum"), which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price

For sales to the United States, we used EP as defined in section 772(a) of the Act. We calculated EP based on the same methodologies described in the

Preliminary Determination, with the following exceptions:

Based on our findings at verification, we made revisions to Gloria's U.S. sales database related to its reported date of sale, U.S. credit expenses, domestic inland freight, brokerage and handling, and gross unit price. *See* Gloria's Calculation Memorandum, Gloria's Sales and Cost Verification Report and Comment 2 and 6 of the January 15, 2002 *Decision Memorandum*. Finally, we have included the additional U.S. sales provided by Gloria at verification in our final calculations. See Comment 7 of the January 15, 2002 *Decision Memorandum*.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the COP, whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Based on information provided by Gloria since the *Preliminary Determination*, we revised Gloria's costs to include the verified COP and CV data based on Gloria's August 6, 2001 supplemental questionnaire response. We have combined Gloria's raw material costs into a single weight-averaged cost for each grade designation under the Department's model matching methodology for the final determination. *See* Comment 1 of the January 15, 2002 *Decision Memorandum*. We revised Gloria's grade designation by collapsing into a single grade designation the direct material costs for three grades Gloria incorrectly reported separately. *See* Comment 2 of the January 15, 2002 *Decision Memorandum*.

Based on our findings at the cost verification, we made revisions to Gloria's COP database to correct errors related to its reported costs for SG&A, research and development, and interest expenses. Because we verified the information in the CV and COP databases submitted by Gloria, we have removed the upward adjustments made at the preliminary determination for direct materials, direct labor, variable and fixed overhead. We have recalculated Golden Win's G&A expense ratio based on its financial statements and excluded the "bad debt loss" from accounts receivable noted in the CPA adjustment from our calculation. *See* Comment 4 of the January 15, 2002 *Decision Memorandum*. We have reduced Gloria's reported COM by the amount of packing expenses reported in the sales database. *See* Comment 7 of the January 15, 2002 *Decision Memorandum*.

For the products Gloria reported sold but not purchased or produced during the POI, we have reassigned costs based on a more appropriate match to the next most similar grade than those reported by Gloria. We have dropped costs associated with products purchased but not produced by Gloria. *See* Comment 3 of the January 15, 2002 *Decision Memorandum*.

2. Calculation of NV

We recalculated credit expenses using the last payment date reported. *See* Comment 6 of the January 15, 2002 *Decision Memorandum*. Furthermore, we excluded from Gloria's home market sales database, the sales of products for which Gloria reported a zero production quantity because these products were produced by other manufacturers. *See* Comment 7 of the January 15, 2002 *Decision Memorandum*.

In addition, we corrected several errors related to Gloria's reported return quantity, warranty, warehousing, and inland freight expense fields, which were presented by Gloria at the onset of the sales verification. *See* Gloria's Calculation Memorandum and Gloria's Sales and Cost Verification Report.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by Gloria for our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002 *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Determination

We determine that the following weighted-average percentage margins exist for the period October 1, 1999, through September 30, 2000:

Exporter/manufacturer	Weighted-average margin percentage
Gloria	0.00

Suspension of Liquidation

Because the estimated weighted-average dumping margin of the examined company is 0.00 percent, we are not directing the Customs Service to suspend liquidation of entries of stainless steel bar from Taiwan.

Notification of the International Trade Commission

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination. This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Gloria's Direct Material Costs.
Comment 2: Gloria's Grade Designations.
Comment 3: Cost Data with Zero Production Quantities.
Comment 4: Golden Win's G&A.
Comment 5: Interest Expense Calculation.
Comment 6: Credit Expenses.
Comment 7: Additional U.S. Sales.
Comment 8: Packing.
Comment 9: Variable and Fixed Overhead Adjustment.

[FR Doc. 02–1654 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy

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

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Italy. We determine that stainless steel bar from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Italy. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled *"Continuation of Suspension of Liquidation."*

EFFECTIVE DATE: February 23, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Melani Miller, or 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, (202) 482–0116, or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Italy*, 66 FR 40214 (August 2, 2001) (*"Preliminary Determination"*)), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Acciaierie Valbruna Srl/Acciaierie Bolzano S.p.A. ("Valbruna"), Acciaiera Foroni SpA ("Foroni"), Trafilerie Bedini, Srl ("Bedini"), and Rodacciai S.p.A. ("Rodacciai") (collectively, "the respondents"). We issued verification reports in October and November 2001. *See* "Verification" section of this notice for further discussion.

The petitioners and respondents filed case and rebuttal briefs, respectively, on November 21 and November 28, 2001. A public hearing was held at the request of the petitioners on December 5, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of the Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determinations in these investigations, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with*

Final Antidumping Duty Determination: Stainless Steel Bar from Italy, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Use of Facts Available

As explained in the *Preliminary Determination*, we based Cogne's antidumping duty rate on adverse facts available, in accordance with section 776 of the Act.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because Cogne failed to respond to the Department's questionnaire.

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Cogne decided not to respond to the Department's questionnaire. On this basis the Department determined that it failed to cooperate by not acting to the best of its ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned Cogne an antidumping rate based on adverse inferences.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 10826, 10847 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 40433 (July 29, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("*SAA*"), states that "corroborate" means to determine that the information used has probative value. *See SAA* at 870.

In this case, when analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margins for purposes of using them as adverse facts available, we re-examined the price and cost information provided in the petition in light of information developed during the investigation. For further details, see the Memorandum to Richard W. Moreland, "Preliminary Determination of Stainless Steel Bar from Italy: *Corroboration Memorandum*," dated July 26, 2001.

As we noted in the *Preliminary Determination*, in accordance with Section 776(c) of the Act, we were able to partially corroborate the information in the petition using information from independent sources that were reasonably at our disposal. Using this information, we were able to corroborate the price-to-price margin calculations in the petition, but were unable to fully corroborate the constructed value margin calculations in the petition. We have re-examined the evidence on the record of this investigation and continue to find that we are unable to corroborate the constructed value margin calculations. As a result, we are continuing to assign Cogne the highest price-to-price margin rate contained in the petition, 33.00 percent, for purposes of the final determination. *See Comment 17* of the January 15, 2002 *Decision Memorandum*.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Italy to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in each individual respondent's calculation memorandum, dated January 15, 2002, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

Bedini

Based on information provided by Bedini since the *Preliminary Determination*, we revised Bedini's calculations to include its updated and verified further manufacturing costs. We also corrected several clerical errors related to Bedini's reported expense fields based on Bedini's CEP verification. We also revised the order of Bedini's product matching characteristics to follow the Department's instructions. Finally, we revised Bedini's U.S. control numbers so that they would reflect the size as

imported instead of the size as sold to the first unaffiliated U.S. customer. For a detailed description of all U.S. sales changes made to Bedini's margin calculations for the final determination, *see Bedini Final Determination Calculation Memorandum.*

Foroni

Based on our findings at the CEP verification, we made revisions to Foroni's U.S. sales database to correct certain errors related to its reported advertising expenses, billing adjustments, indirect selling expenses, U.S. inventory carrying costs, U.S. duty rates and U.S. commissions. See Memorandum from Team to John Brinkmann, "Final Determination Calculation Memorandum for Foroni S.p.A. and Foroni Metals of Texas' ("*Foroni Final Determination Calculation Memorandum*") dated January 15, 2002 and Memorandum from Anthony Grasso to John Brinkmann, "Verification of the Constructed Export Price Sales of Foroni S.p.A."s U.S. Affiliate, Foroni Metals of Texas, in the Antidumping Duty Investigation of Stainless Steel Bar from Italy," dated October 23, 2001.

Rodacciai

Based on information contained in an August 8, 2001 submissions and our findings at the CEP verification, we corrected several clerical errors to Rodacciai's CEP sales database, including the addition of several CEP sales that Rodacciai had inadvertently excluded from the U.S. database. See Rodacciai's August 8, 2001 submission and *Rodacciai Final Determination Calculation Memorandum.*

Based on our findings at the CEP verification, we made several corrections to Rodacciai's reported size coding and revised Rodacciai's reported U.S. indirect selling expense ratio to include the depreciation incurred by Sovereign in the last three months of the POI.

We have revised the treatment of Rodacciai's reported U.S. credit adjustment variables, which were reported as positive integers, by deducting these values from home market and U.S. gross prices, respectively, rather than adding them as we did in the *Preliminary Determination.*

For purposes of calculating Rodacciai's U.S. credit expenses, we are adjusting the gross unit price for credit adjustments and any on-invoice discounts. Further, we are using the last day of verification, August 17, 2001, as the date of payment for unpaid U.S. sales, and have recalculated U.S. credit expenses accordingly.

Valbruna

Based on our findings at the CEP verification, we made several changes to Valbruna's reported CEP sales database. *See Valbruna Final Determination Calculation Memornadum.*

(1) We increased the gross unit price on several observations for which an alloy surcharge was not included.

(2) We applied a price reduction to all reported sales observations related to a particular U.S. sales invoice.

(3) We have changed the U.S. rebate field to reflect the correct rebate percentage for 1999 sales.

(4) We set the U.S. brokerage expense field to zero for all EP sales because all EP sales were made on a C&F basis where the U.S. customer takes responsibility for all duties and charges.

(5) We decreased other transportation expenses for sales made out of the Houston warehouse.

(6) We have revised Valbruna's U.S. sales database to treat certain cleaning costs incurred on one sale of subject merchandise as a warranty expense, and have made a corresponding reduction to indirect selling expenses in order to avoid double-counting this expense.

(7) We have revised Valbruna's U.S. sales database to include certain costs incurred to cut the subject merchandise before it was placed into the consignment inventory for one of Valbruna's customers on all sales to this particular customer.

(8) We have revised Valbruna's U.S. sales database to deduct the per-unit repacking expense from the reported sales price for all sales to one customer whose shipments were subject to U.S. repacking, but for whom there was not a separate line item on the sales invoices.

(9) We adjusted the databases to reflect an increase in the U.S. indirect selling expenses ratio due to the inadvertent omission of certain warehousing expenses and short-term interest revenue, and revised the ratio such that "Other Income" items were not deducted from the total U.S. indirect selling expenses.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Foroni

As discussed in the memorandum from Robert Greger to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated January 15, 2002 ("*Final Accounting Calculation Memo—Foroni*"), we adjusted Foroni's reported direct materials costs ("DIRMAT") to account for two errors made in calculating its reported costs: (1) Foroni underestimated the nickel content of its stainless steel scrap inputs and (2) used an average rather than an actual exchange rate in converting its U.S. dollar purchases.

Furthermore, as discussed in the *Final Accounting Calculation Memo—Foroni,* we also decreased the G&A expense ratio and increased the financial expense ratio.

Valbruna

As discussed in the memorandum from Robert Greger to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated January 15, 2002 ("*Final Accounting Calculation Memo—Valbruna*"), we increased the reported total cost of manufacturing ("TOTCOM") to include an unreconciled difference between Valbruna's cost accounting system and the reported cost files, and to include the portion of depreciation on revalued asset amounts related to subject merchandise that were included in Valbruna's unconsolidated financial statements. Furthermore, we excluded Valbruna's claimed inventory charge adjustment from the calculation of the reported TOTCOM.

Finally, as discussed in the *Final Accounting Calculation Memo—Valbruna,* we increased the G&A ratio and decreased the financial expense ratio.

2. Calculation of NV

Bedini

Based on Bedini's November 14 and November 29, 2001 submissions, we revised our calculations to include new home market sales Bedini found in preparation for its home market verification.

Also, consistent with the *Preliminary Determination,* we have dropped from our calculation all home market sales of Ugine Savoie-Imphy (Bedini's parent company and a respondent in the companion French proceeding) stainless steel wire rod that were subcontracted to Bedini as part of a tolling operation for processing into subject merchandise.

For a detailed description of all home market changes made to Bedini's margin calculations for the final determination, *see Bedini Final Determination Calculation Memorandum.*

Foroni

On August 3, 2001, Foroni submitted a value for the packing costs incurred on exports of subject merchandise from Italy to the United States. For the final determination we used this packing rate in place of the facts available rate applied in the *Preliminary Determination* and accordingly reduced fixed overhead by excluding the total packing expenses. *See Final Accounting Calculation Memo—Foroni* and *Foroni Final Determination Calculation Memorandum.*

Rodacciai

Based on information contained in an August 8, 2001 submissions and our findings at the CEP verification, we corrected several clerical errors to Rodacciai's home market sales database. *See* Rodacciai's August 8, 2001 submission and *Rodacciai Final Determination Calculation Memorandum.*

We have corrected a misreported customer relationship for one of Rodacciai's affiliated customers.

We have revised the treatment of Rodacciai's reported home market credit adjustment variables, which were reported as positive integers, by deducting these values from home market and U.S. gross prices, respectively, rather than adding them as we did in the *Preliminary Determination.*

For purposes of calculating Rodacciai's home market credit expenses, we are adjusting the gross unit price for credit adjustments and any on-invoice discounts.

We corrected certain variable names used in the weight-averaging of Rodacciai's home market adjustment variables.

Valbruna

We revised the home market indirect selling expense ratio to reflect a minor change to the final year-end trial balance.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination.*

Verification

In this investigation, and in the companion SSB investigations from Germany, France, the United Kingdom and Korea, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the events of September 11, for some companies in these countries we were unable to fully complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and that the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States,* 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States,* 698 F.Supp. 275, 281 (Ct. Int'l Trade 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States,* 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete all of the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002, *Decision Memorandum,* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from Italy, except for subject merchandise produced by Bedini (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register.** Furthermore, in accordance with section 735(c)(1)(C) of the Act, we are directing Customs to suspend liquidation of all imports of subject merchandise by Valbruna (which had a *de minimis* weighted-average margin for the *Preliminary Determination*) that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Acciaierie Valbruna Srl/ Acciaierie Bolzano S.p.A	2.50
Acciaiera Foroni SpA	7.07
Trafilerie Bedini, Srl	1.70
Rodacciai S.p.A	5.89
Cogne Acciai Speciali Srl	33.00

Exporter/manufacturer	Weighted-average margin percentage
All Others* **	3.81

*Pursuant to 19 CFR 351.204(d)(3), we have excluded rates calculated for voluntary respondents from the calculation of the all-others rate under section 735(c)(5) of the Act.

**Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis*, or determined entirely on facts available.

For Bedini, because its estimated weighted-average final dumping margin is *de minimis*, we are directing Customs to terminate suspension of liquidation of Bedini's entries and refund all bonds and cash deposits posted on subject merchandise produced by Bedini.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

Comment 1: Treatment of Sales Above Normal Value.
Comment 2: Commission Offset.
Comment 3: Model Match Methodology.
Comment 4: Differences in Bedini LOT and Bedini CEP Offset.
Comment 5: Bedini HM Commission Expenses.
Comment 6: Clerical Errors in the Calculation of Bedini U.S. Credit Expenses.
Comment 7: Bedini Reconstruction of Identical CONNUMs.
Comment 8: Collapsing the Sales Prices and Production Costs of Bedini and U-SI.
Comment 9: Application of Adverse Facts Available for Bedini Due to Home Market Reporting Flaws.
Comment 10: Bedini HM Billing Adjustments.
Comment 11: Partial Adverse Facts Available for Unreported Bedini U.S. Sales.
Comment 12: Revisions to the Calculation of Certain Bedini Expense Fields.
Comment 13: Adverse Facts Available for All Bedini Expenses Reported on an Average, Not A Transaction-Specific, Basis.
Comment 14: Methodology for Calculating Bedini's U.S. Credit Expenses.
Comment 15: Adjustments to Bedini's Reported Costs to Reconcile With the General Ledger.
Comment 16: Correction to Bedini's Verification Report.
Comment 17: Application of Adverse Facts Available to Cogne.
Comment 18: Use of Facts Available to Value Foroni's Packing Costs.
Comment 19: Foroni's Advertising Expenses.
Comment 20: Foroni's Calculation of Direct Materials.
Comment 21: Exclusion of Foroni's Directors' Fees from the G&A Expense Ratio.
Comment 22: Foroni's Short-Term Bond Interest Offset.
Comment 23: Foreign Exchange Gains & Losses.
Comment 24: Foroni's Yield Loss.
Comment 25: Use of Rodacciai's Reported Data.
Comment 26: Rodacciai's Reported Home Market Date of Sale.
Comment 27: Additional Sales Submitted by Rodacciai.
Comment 28: Rodacciai's U.S. Indirect Selling Expenses.
Comment 29: Rodacciai's U.S. Warehousing Expenses.
Comment 30: Rodacciai's U.S. Sales with Missing Date of Payment.
Comment 31: Rodacciai's G&A Expense Ratio.
Comment 32: Rodacciai's Interest Expense Ratio.
Comment 33: Recalculation of Certain Home Market Expenses Reported by Rodacciai.
Comment 34: Rodacciai's Home Market Credit Adjustments.
Comment 35: Corrections to and Based on Valbruna's CEP Verification Report.
Comment 36: Valbruna's Opportunity Cost on VAT Rebates.
Comment 37: Valbruna's Levels of Trade.
Comment 38: Treatment of Valbruna's Consignment Holding Period.
Comment 39: Valbruna's U.S. Brokerage Expenses.
Comment 40: Valbruna's U.S. Warranty Expenses.
Comment 41: Valbruna's Unreported Price Adjustment.
Comment 42: Valbruna's U.S. Repacking Expenses.
Comment 43: Use of Actual Prices Paid by Valbruna's Customers.
Comment 44: Valbruna's U.S. Indirect Selling Expense Ratio.
Comment 45: Valbruna's Home Market Inventory Carrying Costs.
Comment 46: Valbruna's G&A Expense Ratio.
Comment 47: Valbruna's Financial Expense Ratio.
Comment 48: Inclusion of Depreciation Expense in Valbruna's Reported Manufacturing Costs.
Comment 49: Valbruna's Claimed Inventory Adjustment.
Comment 50: Treatment of Unreconciled Differences in Valbruna's Cost of Manufacture.
Comment 51: Foreign Exchange Gains and Losses on Accounts Payable.
Comment 52: Foreign Exchange Gains and Losses on Financing.

[FR Doc. 02–1656 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany

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

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Germany. We determine that stainless steel bar from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Germany. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Andrew Covington or Meg Weems, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, (202) 482–3534, or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Germany*, 66 FR 40214 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Edelstahl Witten-Krefeld GmbH, ("EWK"), Krupp Edelstahlprofile ("KEP"), BGH Edelstahl Seigen GmbH and BGH Edelstahl Freital GmbH ("BGH"), and Walzwerke Einsal GmbH ("Einsal") (collectively, "the respondents"). We issued verification reports in October and November 2001. See "Verification" section of this notice for further discussion.

The petitioners and respondents filed case and rebuttal briefs, respectively, on November 27 and December 3, 2001. No public hearing was held because the only written request received (from the petitioners) was withdrawn.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. For details, see the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation."

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).

With the exception of BGH which filed comments on the Department's preliminary scope decision with respect to SQOFES, and with which the Department disagrees and has addressed in the January 15, 2002 *Issues and Decision Memorandum for the Antidumping Duty Investigation of Stainless Steel Bar from Germany; Final Determination* ("*Decision Memorandum*"), no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Germany to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in each individual respondent's calculation memorandum, January 15, 2002, which is on file in the Import Administration's Central Records Unit

("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the Preliminary Determination, with the following exceptions:

EWK

We revised the reported amounts for certain sales for billing adjustments, early payment discounts, U.S. and domestic inland freight, international freight, U.S. brokerage and handling, transportation insurance, imputed credit, indirect selling expenses, inventory carrying costs, based on verification findings. For further information, see January 15, 2002 *EWK Calculation Memorandum* and Comments 20, 21, 22, 23, 24, 25 and 26 in the Decision Memorandum.

KEP

We revised the reported amounts for certain sales for domestic inland freight, international freight, imputed credit, early payment discounts, brokerage and handling, and warranty expenses based on verification findings. For further information, see January 15, 2002 *KEP Calculation Memorandum* and Comments 39 and 40 in the *Decision Memorandum.*

Einsal

We based date of sale on sale invoice date. We revised Einsal's reported domestic inventory carrying costs using the DM short-term interest rate. For further information, see Einsal's January 15, 2002 Calculation Memorandum.

Normal Value

We used the same methodology as that described in the Preliminary Determination to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

EWK

We adjusted EWK's reported cost of manufacture ("COM") to reflect the market price of EWK's steel scrap purchased from an affiliate. We also adjusted EWK's reported general and administrative ("G&A") expense based on the information obtained during the cost verification. Lastly, we adjusted EWK's reported financial expense factor to exclude the claimed financial expense offset, and to include an estimated amount of interest income that EWK's parent company would have earned from short-term sources. *See* Memorandum to Neal Halper, Director, Office of Accounting, from Sheikh M. Hannan, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination* and Comments 18, 27 and 29 of the *Decision Memorandum.*

KEP

We adjusted KEP's reported cost of manufacture to reflect the cost of production of one of KEP's inputs purchased from an affiliate and we adjusted the COM of each of KEP's products due to the understatement of the cost of manufacturing. We also adjusted the denominator of the G&A expense ratio as a result of the increased cost of manufacture. Finally, we adjusted KEP's reported financial expense factor to exclude the claimed financial expense offset, and to include an estimated amount of interest income that KEP's parent company would have earned from short-term sources. For further information, *see* Memorandum to Neal Halper, Director, Office of Accounting, from Laurens van Houten, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination*, and Comments 18 and 36 of the *Decision Memorandum.*

BGH

We adjusted BGH's reported direct materials, direct labor, variable overhead, fixed overhead and general and administrative expenses for errors discovered during verification (*see*, Memorandum to Neal Halper, Director Office of Accounting, from LaVonne Jackson, dated October 26, 2001, *Verification Report on the Cost of Production and Constructed Value Data Submitted by BGH Freital*, Section I). We also adjusted BGH's reported unconsolidated financial expense ratio to reflect BGH's consolidated financial expenses and cost of production. *See* Memorandum to Neal Halper, Director, Office of Accounting, from LaVonne Jackson, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination.*

Einsal

We increased Einsal's interest expense ratio to account for an end of the year audit accrual that was not captured in the original interest expense calculation. We also revised the total COM for one of Einsal's reported control numbers based on findings at verification. For further information, see January 15, 2002 *Einsal Calculation Memorandum.*

2. Calculation of NV

EWK

For certain sales, we revised EWK's reported transportation insurance, billing adjustments, early payment discounts, inventory carrying costs and imputed credit. For further information, see January 15, 2002 *EWK Calculation Memorandum.*

KEP

For certain sales, we revised KEP's reported product matching characteristics, manufacturer code, domestic inland freight, early payment discounts, warranty expenses, interest revenue, warehousing expenses, and other direct selling expenses. For further information, see January 15, 2002 *KEP Calculation Memorandum* and Comments 30, 31, 34, and 38 in the *Decision Memorandum.*

BGH

We found three distinct levels of trade in the home market. See January 15, 2002 *BGH Calculation Memorandum* and Comment 3 in the *Decision Memorandum.* We corrected a programming error in the preliminary calculations to grant BGH a level of trade adjustment. For further information, see January 15, 2002 *BGH Calculation Memorandum.*

Einsal

We found two distinct levels of trade in the home market. We based date of sale on sale invoice date. We revised Einsal's inventory carrying expenses and credit expenses using the correct DM short-term interest rate. Based on verification findings, we are no longer using the exchange rates based on Einsal's currency transactions in forward markets. For further information, see January 15, 2002 *Einsal Calculation Memorandum* and Comment 12 in the *Decision Memorandum.*

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*, except as discussed above with respect to Einsal.

Verification

In this investigation, and in the companion SSB investigations from Italy, France, the United Kingdom and Korea, verifications were scheduled for

all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit," and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States*, 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F.Supp. 275, 281 (CIT 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (CAFC 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Decision Memorandum*, which is hereby adopted and incorporated by reference into this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from Germany that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
BGH	16.62
Einsal	4.31
EWK	15.54
KEP	32.24
All Others	17.77

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

BGH

Comment 1: Quantity Differences in Fair Market Value Determination.
Comment 2: Methodology for Price Comparisons.
Comment 3: Level of Trade.
Comment 4: Final Finishing.
Comment 5: Treatment of Sales Above Normal Value.
Comment 6: Level of Trade Adjustment.
Comment 7: Special-Quality Oil Field Equipment Steel.
Comment 8: Commission Paid to BGH's U.S. Affiliate.
Comment 9: Products Sold But Not Produced During the POI.
Comment 10: Affiliated Party Input Methodology.
Comment 11: Verification Errors.

Einsal

Comment 12: Level of Trade.
Comment 13: Products Sold But Not Produced During the POI.
Comment 14: Minor Changes and Revisions Resulting from Verification.

EWK and KEP

Comment 15: Collapsing of EWK and KEP.
Comment 16: Collapsing Methodology.
Comment 17: EWK and KEP LOT Issues.
Comment 18: Net Financial Expense Ratio Calculation.

EWK

Comment 19: Use of Supplied Cost Data for Certain EWK Tool Steel Sales.
Comment 20: Missing Foreign Inland Freight on EWK's CEP sales.
Comment 21: Incomplete Foreign Inland Freight on EWK's EP sales.
Comment 22: EWK Failure to Report U.S. Handling Expenses for Certain CEP Sales.

Comment 23: Understatement of EWK's International Freight on Tool Steel Sales.
Comment 24: Adjustment of Reported U.S. Inland Freight.
Comment 25: Correction of Domestic Indirect Selling Expenses for U.S. and Home Market Sales.
Comment 26: Deducting Domestic Indirect Selling Expenses from CEP sales.
Comment 27: EWK's Affiliated Party Purchases.
Comment 28: Costs for Products Not Produced by EWK.
Comment 29: G&A Ratio Calculation

KEP

Comment 30: Allocation of KEP's Home Market Warehousing Expenses.
Comment 31: Planned versus Actual Warehousing Expenses.
Comment 32: Use of Certain KEP Home Market Sales.
Comment 33: Matching Hierarchy and LOT.
Comment 34: KEP's Inland Freight Values.
Comment 35: KEP's Affiliated Party Purchases.
Comment 36: KEP's Cost of Manufacturing.
Comment 37: KEP's Reported Testing Surcharges.
Comment 38: KEP's Reported Home-Market Discounts, Warranty Expenses, and Interest Revenue.
Comment 39: Understatement of U.S. Brokerage Charges.
Comment 40: Use of Correct U.S. Dollar Interest Rate.

[FR Doc. 02–1657 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–830]

Final Affirmative Countervailing Duty Determination: Stainless Steel Bar From Italy

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

ACTION: Notice of final affirmative determination in a countervailing duty investigation.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of stainless steel bar from Italy. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Jennifer Jones at (202) 482–0176 or (202) 482–4194, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2000).

Petitioners

The petition in this investigation was filed by Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL–CIO/CLC (collectively, "the petitioners").

Case History

Since the publication of the preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy*, 66 FR 30414 (June 6, 2001) ("*Preliminary Determination*")), the following events have occurred:

From June 25, 2001 to July 13, 2001, we conducted a verification of the questionnaire responses submitted by the Government of Italy ("GOI"), the Provincial Government of Bolzano, the Regional Government of Valle D'Aosta, Trafileria Bedini S.r.l. ("Bedini"), Acciaiera Foroni S.p.A. ("Foroni"), Italfond S.p.A., Rodacciai S.p.A., and Acciaierie Valbruna S.p.A. ("Valbruna").

On August 2, 2001, we published a notice postponing the final antidumping determination until December 17, 2001. *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy*, 66 FR 40214 (August 2, 2001). Because of the alignment of this countervailing duty investigation with the antidumping duty investigation, the final determination in this countervailing duty investigation was also postponed until December 17, 2001.

On October 23 and 24, 2001, we informed all interested parties that, due to the events of September 11, 2001, we were tolling the final determination deadline until January 15, 2001. *See* Memorandum to File, "Tolling of Final Determination Deadline," dated October 25, 2001.

On October 29, 2001, we received case briefs from the petitioners, Valbruna, Bedini, and Foroni. On November 5, 2001, we received rebuttal briefs from the petitioners, Valbruna, and Bedini. Foroni did not file a rebuttal brief. No hearing was held because no party requested a hearing.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times in thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled product), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedules of the United States* ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Changes: Certain requests regarding the scope of this investigation were addressed in the preliminary determinations of the concurrent

antidumping duty investigations and after the preliminary determination in this countervailing duty case. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy*, 66 FR 40214, 40216 (August 2, 2001)). The respondents in the companion antidumping duty investigations filed comments seeking to exclude certain products from the scope of these investigations. Because these comments affect the scope of this investigation as well, we are addressing them now. The specific products identified in their exclusion requests are:

1. Stainless steel tool steel.
2. Welding wire.
3. Special-quality oil field equipment steel ("SQOFES").
4. Special profile wire.

These requests are addressed in more detail in the Memorandum to the File, "Definition of Scope," dated July 26, 2001 and its attachments, which has been placed on the record of this investigation. The conclusions in this memorandum are summarized below.

Regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of this investigation. In addition, we determined that SQOFES does not constitute a separate class or kind of merchandise from the subject merchandise.

Regarding special profile wire, we determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we have not included special profile wire in this investigation.

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On February 23, 2001, the ITC published its preliminary determination finding a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of stainless steel bar from Italy. *See Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 11314 (February 23, 2001).

Period of Investigation

The period of investigation for which we are measuring subsidies is the calendar year 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated January 15, 2001 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading "Italy." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual net subsidy rate for each manufacturer of the subject merchandise. Pursuant to section 705(c)(1)(B)(ii) of the Act, we are directing Customs to continue to suspend liquidation of all imports of the subject merchandise from Italy, except for subject merchandise produced and exported by Acciaierie Valbruna S.p.A., Acciaiera Foroni, S.p.A, Trafileria Bedini S.r.l., Italfond S.p.A., or Rodacciai S.p.A. (all of which have either a zero or *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after June 6, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the "all others" rate as CAS" rate, because the rates for all other investigated companies are either zero or *de minimis*. We note that although portions of CAS" rate were based on adverse facts available, we based the majority of our calculations on information provided by the GOI and EC in this investigation. We determine the total estimated net subsidy rate for each company to be:

Producer/exporter	Net subsidy rate (percent)
Cogne Acciai Speciali S.r.l	13.17
Acciaierie Valbruna S.p.A	0.42
Acciaiera Foroni S.p.A	0.00
Trafileria Bedini S.r.l	0.00
Italfond S.p.A	0.18
Rodacciai S.p.A	0.07
All Others	13.17

In accordance with our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of stainless steel bar from Italy, which were entered or withdrawn from warehouse, for consumption on or after June 6, 2001, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise for countervailing duty purposes entered on or after October 4, 2001, but to continue the suspension of liquidation of entries made from June 6, 2001 through October 3, 2001.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order ("APO"), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Facts Available Methodology for CAS.

Comment 2: Appropriate AUL for Valbruna.

Comment 3: Attribution of Subsidies Following Bolzano's Change in Ownership.

Comment 4: Interest Subsidy Received by Falck Under Article 3 of Law 193/84.

Comment 5: Law 193/84 Capacity Reduction Grants.

Comment 6: Repayment of Law 25/81 Benefits by Falck.

Comment 7: Bolzano Industrial Site Lease and Extraordinary Maintenance.

Comment 8: Bolzano Industrial Site Purchase.

Comment 9: Countervailability of Law 44/92.

Comment 10: Exclusion of Valbruna's Non-Italian Production from Sales Denominator.

Comment 11: Denominator Used in Calculating Valbruna's Subsidy Rate.

Comment 12: Appropriate Discount Rate for Valbruna.

Comment 13: Law 451/94 Early Retirement Program.

Comment 14: Attribution of 1983 and 1985 Law 25/81 Grants to Valbruna.

Comment 15: Law 25/81 Environmental Grants.

Comment 16: European Social Fund.

Comment 17: Law 549/95.

Comment 18: Appropriate AUL for Foroni.

[FR Doc. 02–1655 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002; Correction

AGENCY: Office of Global Programs, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Office of Global Programs published a notice in the **Federal Register** on Monday, January 14, 2002, announcing an opportunity for FY 2002 funding for the Global Carbon Cycle program area. This notice corrects and revises the dates for submission of proposals.

FOR FURTHER INFORMATION CONTACT: Steve Auer 301–427–2089 ext. 153.

Correction

In the **Federal Register** issue of January 14, 2002, [Docket No. 000616180–2002–04, page 1719, second column], the date reads as follows: "Full proposals must be received at OGP no later than March 29, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under **SUPPLEMENTARY INFORMATION.**" The sentence with the correct date should read: "Full proposals must be received at OGP no later than April 8, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under **SUPPLEMENTARY INFORMATION.**"

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–1663 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011602A]

Endangered Species; Permits

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

ACTION: Receipt of an application for a research permit (1360).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. David Secor, Chesapeake Biological Laboratory (CBL).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 22, 2002.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Room 13730, Silver Spring, MD 20910–3226 (phone:301–713–1401).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA.

Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summary are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Fish

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Application 1360

The applicant hypothesizes that the recovery of shortnose sturgeon on the Hudson River occurred due to one or several strong year-classes following nursery system recovery to normoxia after 1977. The applicant proposes to test this hypothesis by determining the ages of shortnose sturgeon caught in the Hudson river by interpreting annulus of pectoral fin spines. The method will be tested on 10 captive shortnose sturgeon from seven age classes (70 total) from US Fish and Wildlife Service Warm Springs Fish Hatchery, Georgia. The applicant will clip a 1cm section from the primary spine of one pectoral fin near the point of articulation. After this has been tested in hatchery fish, the applicant proposes to capture shortnose sturgeon in the Hudson River with gillnets, handle, measure, check for tags, tag, passive integrated transponder tag, sex (by external or fiberoptic examination), and release. The applicant proposes to take 190 shortnose sturgeon in 2002 and 480 in 2003.

Dated: January 17, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1662 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: This meeting is the second in a series of planned public meetings being held by the Commission to carry out its statutory charge with respect to the U.S. civil and military, air and space enterprise. The focus of this meeting is on receiving testimony and conducting deliberations on aerospace business considerations; export control; and communication, navigation and surveillance (CNS). The Commissioners will also address current issues, including aerospace budget, workforce and space concerns. The meeting will close with a discussion and decisions regarding the scope and priorities for the next meeting.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission is governed by the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR Subpart 101–6.10). All interested parties are welcome to submit written comments at any time.

TIME AND DATE: Tuesday, February 12, 2002; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Herbert C. Hoover Building Auditorium, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia 22202; phone 703–602–1515; e-mail *watersc@osd.pentagon.mil.*

Dated: January 15, 2002.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 02–1640 Filed 1–22–02; 8:45 am]

BILLING CODE 6820–WP–P

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Final Sequestration Report for Fiscal Year 2002 to the Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budge and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Final Sequestration Report for Fiscal Year 2002* to the House of Representatives, the Senate, and the Office of Management and Budget.

William J. Gainer,

Associate Director, Management, Congressional Budget Office.

[FR Doc. 02–1442 Filed 1–22–02; 8:45 am]

BILLING CODE 01–0703–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed AmeriCorps Attrition Overview Study. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 25, 2002.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. William Ward, Department of Research and Policy Development, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: William Ward, (202) 606–5000, ext. 375.

SUPPLEMENTARY INFORMATION:

AmeriCorps Attrition Overview Study

I. Background

Each year, the Corporation collects and reports on enrollment, service completion, and attrition of AmeriCorps participants. Attrition rates for participants in all AmeriCorps programs averaged 28 percent for programs years 1994–1998. As a maturing service organization, the Corporation needs to examine the AmeriCorps programs for attrition trends. An analysis of data on attrition will help the Corporation revise strategies of program development, recruitment, training, and supervision in order to reduce the rate of attrition.

II. Current Action

The Corporation seeks to conduct an in-depth study of the attrition patterns of its AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This study will entail telephone interviews of approximately 30 minutes in length with 1000 former AmeriCorps members. It will provide indicators of program success, differences among programs in retaining participants, individual characteristics of participants who tend to drop out, and combinations of member and program characteristics that appear to work well or work poorly.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Attrition Overview Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Former AmeriCorps members.

Total Respondents: 1,000.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 17, 2002.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–1660 Filed 1–22–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Initiative Implementation; Meeting

AGENCY: U.S. Army Operations Support Command, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Operations Support Command, will host this meeting. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Security Requirements and ARMS Contractors; Industrial Base Strategy and Industrial Commercialization; Policy on Ownership of Property; ARMS Revenue Projects; and Arsenal Support Program Initiative Update. This meeting is open to the public.

DATES: February 27–28, 2002.

PLACE OF MEETING: Clarion Hotel Universal, 7299 Universal Boulevard, Orlando, FL 32819.

TIME: 8:30 a.m.–5 p.m. on February 27 and 7:30 a.m.–12 p.m. on February 28.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Operations Support Command, Attn; AMSOS–CCM–E, Rock Island Arsenal, IL 61299; phone (309) 782–3360.

SUPPLEMENTARY INFORMATION: A block of rooms has been reserved at the Clarion Hotel Universal for the nights of 26–28 February 2002. The Clarion Hotel Universal is located at 7299 Universal Boulevard, Orlando, FL 32819, Local Phone (401) 351–5009. Please make your reservations by calling 800–445–7299. Be sure to mention the guest code U.S. Army Operations Support Command. Reserve your room prior to January 26th to get the Government Rate of $89.00 a night. Also notify this office of your attendance by notifying Mike Perez, perezm@osc.army.mil, 309–782–3360 (DSN 793–3360). *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by February 8, 2002.* Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1648 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, February 27, 2002.

Place of Meeting: Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, D.C. (Tentative location)

Start Time of Meeting: Approximately 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs, and the Bicentennial Campaign at the USMA. All proceedings are open.

Edward C. Clarke,

Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.

[FR Doc. 02–1647 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Method and Kit for Detection of Dengue Virus

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,190,859 entitled "Method and Kit for Detection of Dengue Virus" issued 02/20/01. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

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

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

SUPPLEMENTARY INFORMATION: An inactivated dengue virus vaccine to immunize and protect humans against dengue fever is described. The vaccine is based on dengue viruses which have been propagated to high titers in suitable cells, purified and inactivated under conditions which destroy infectivity but preserve immunogenicity, a high level of which is demonstrated in animal models. Uses of the inactivated dengue virus for detecting antibodies to dengue and kits therefore are also described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1643 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning DNA Vaccines Against Tick-Borne Flaviviruses

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,258,788 entitled "DNA Vaccines Against Tick-Borne Flaviviruses" issued 07/10/01. Foreign rights also available (PCT/US98/25322). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

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

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

SUPPLEMENTARY INFORMATION: Particle mediated immunization of tick-borne *flavivirus genes* confers homologous and heterologous protection against tick borne encephalitis.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1642 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Indolo[2,1-b]quinazole-6, 12-dione Antimalarial Compounds and Methods of Treating Malaria

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,284,772 entitled "Indolo[2,1-b]quinazole-6, 12-dione antimalarial compounds and Methods of Treating Malaria" issued 09/04/01. Foreign rights are also available (PCT/US99/22569). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

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

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

SUPPLEMENTARY INFORMATION: Compounds, compositions and methods are provided for treating malaria parasites in vitro and in vivo by administering indolo [2,1–b]quinazoline-6, 12-dione compounds of Formula 1. On Formula 1 A, B, C, D, E, F, G and H are independently selected from carbon and nitrogen, or A and B or C and D can be taken together to be nitrogen or sulfer, with the proviso that not more than three of A, B, C, D, E, F, G and H are other than carbon; wherein R1 through R8 are independently selected from the group consisting of, but not limited to, the halogens, alkyl groups, trifluoromethyl groups, methoxyl groups, the carboxy methyl or carboxy ethyl group, nitro, aryl, heteroaryl, cyano, amino, dialkylaminoalkyl, 1-(4-alkylpiperazinyl), and the pharmaceutically acceptable salts thereof; and wherein X is independently selected from the group consisting of any atom especially oxygen, or any side chain necessary to make the indolo[2,1-b]quinazoline-6, 12-dione compound a "prodrug" as the term is understood by one of ordinary skill in the art of medicinal chemistry. In other words, a side chain having a structure where a carbon-nitrogen double bond bears substituents that make the prodrug more water soluble and bioavailable.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1645 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Method for Production of Plasmodium Causing Relapsing Malaria

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,090,614 entitled "Method for Production of Plasmodium Causing Relapsing Malaria," issued 07/18/00. Foreign rights are also available (PCT/US97/13770). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

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

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

SUPPLEMENTARY INFORMATION: This invention provides for recycling parasites and maintaining long-term cultures of P.vivax and P.ovale. Preferred conditions include: (1) The immediate transfer of parasites to human reticulocytes during the first and second in vitro culture cycles, (2) the use of McCoy's 5A medium modified with L-glutamine containing 25 mM HEPES buffer supplemented with 20% human AB serum, (3) the continual addition of reticulocytes to the culture every 34–44 hours after the beginning of a new culture cycle and (4) the use of alternate static (growth and differentiation phase) and shaker (invasin phase) culture.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1644 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Vaccine Against Ricin Toxin

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,453,271 entitled "Vaccine Against Ricin Toxin" issued 04/05/95. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

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

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

SUPPLEMENTARY INFORMATION: It is now possible to immunize susceptible mammals against the pathological effect of exposure to ricin, including inhalation of ricin, by administration of an immunogenic effective amount of ricin toxin subunits, including subunits of both the A chain and the B chain of the ricin toxin given separately to provide safe, efficacious protection.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1646 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Environmental Restoration of Areas Adjacent to the Arlington and Garrows Bend Channels, Mobile Harbor Federal Navigation Project in Mobile County, Alabama.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the removal, transportation, disposal, and/or remediation of contaminated sediments in and adjacent to the Arlington and the Garrows Bend Channels, Mobile Harbor Federal navigation project in Mobile County, Alabama. The DEIS will be used as a basis for evaluating various alternative plans to implement the authorized clean-up action and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Dr. Susan Ivester Rees, Coastal Environment Team, phone (251) 694–4141, or e-mail at *susan.i.rees@sam.usace.army.mil*, Mobile district, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. A number of hydrological modifications made in the late 1920s have defined a rigid regime at the head of Mobile Bay, which significantly impacts the ecological health of the bay ecosystem. Human intervention at the mouth of the Mobile River over the last 60 to 70 years resulted in the formation of the Garrows Bend Basin. This basin has been the recipient of both urban and industrial runoff since the late 1930s. In the 1950s, Garrows Bend became a slack water tidal basin as a result of the causeway construction across the northern end of the basin linking McDuffie Island with the mainland. Major pollutant loading continued until the 1970s when a principle source was contained by the installation of an improved sewage treatment system; however, historical pollutant residuals and captured urban storm water runoff continue to flow into the basin. This resulted in water bottoms that, although not contaminated by specific concentrated pollutants, exhibit a condition that is not environmentally acceptable. To ensure adequate evaluation of cumulative impacts resulting from the extent of contaminated sediments and the clean-up effort, especially in those areas considered to be sensitive from an environmental standpoint, the Mobile District has decided to undertake a comprehensive environmental impact analysis of options to either remove, transport, dispose, and/or remediate contaminated sediments in and adjacent to the Arlington and Garrows Bend Channels. The extent of geographical coverage for this environmental analysis will include the areas west of the Mobile Ship Channel in the Garrows

Bend Basin. The analysis process will: evaluate the vertical and horizontal extent of contaminated sediments in the region identified in the DEIS; identify various alternatives to either remove, transport, dispose or remediate contaminated sediments in the area; and evaluate the impact of likely environmental enhancement.

2. Alternative scenarios which may be considered include the "No action" alternative; removal of contaminated sediments with disposal at various locations; capping of the contaminated materials in place; and remediation of contaminated sediments by either chemical or biological methods.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, tribal governments and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and alternative restoration methods and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from proposed future environmental restoration efforts. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, storm water runoff, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, Alabama State Port Authority, Alabama State Historic Preservation Officer, City of Mobile, and Mobile Bay National Estuary Program.

4. The first scoping meeting will be held in conjunction with a public scooping meeting concerning the initiation of an impact analysis associated with the Alabama State Port Authority Department of the Army permit request for port related development in the Choctaw—Garrows Bend area. This meeting will be held in Federal 2002 in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobile District by issuance of a Public Notice and/or notices in the local media.

5. It is anticipated that the DEIS will be made available for public review in October 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1649 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Choctaw Point and Monroe Park Development Project, Located in Mobile County, Alabama

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers, (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the Alabama State Port Authority's (ASPA) construction of a marine container terminal facility and associated intermodal distribution facilities on existing property owned by the ASPA in the Choctaw Point and Monroe Park area on Mobile Bay in the City of Mobile, Mobile County, Alabama. The Corps will be evaluating a permit application for the work under the authority of section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. The DEIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. John B. McFadyen, Regulatory Branch, phone (251) 690–3261 or e-mail at *john.b.mcfadyen@sam.usace.army.mil,* or Dr. Susan Ivester Rees, Coastal Environment Team, phone (251) 694–4141 or e-mail at *susan.i.rees@sam.usace.army.mil,* Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. The permit applicant (Department of Army permit number AL01–0469–U) is proposing to construct container terminals, a rail intermodal yard, and distribution warehouses on existing property owned by the ASPA in the Choctaw Point and Monroe Park area of Mobile Bay, Mobile County, Alabama. The terminals will consist of piers, bulkheads, and necessary appurtenances to berth two (2) container ships up to 850 feet in length. Each dock will be equipped with cranes for loading and unloading containers. These cranes will be supported on rails laid on the dock structures. Entrance and exit gates and an administrative building will be constructed to facilitate the movement of the containers between ship, rail, and trucks. In addition to these gates, a grade separation will be provided to separate the movement of traffic between the container terminal yard and the new rail intermodal yard (to be constructed west of Choctaw Point) over the rail tracks to and from McDuffie Island. The construction of the container terminals would include about 77 acres of filled uplands and 17 acres of filled open water on the Mobile River channel. About 3,000 linear feet of bulkhead would be placed along this shoreline area. The rail intermodal yard and distribution center would be constructed upon about 187 acres of existing uplands along the north side of the Garrows Bend Basin. Over 91 acres of the uplands would be raised to elevation +12 feet NGVD. The remaining 96 acres of existing uplands would possibly require minor excavation and grading to meet this desired elevation. Additionally, fill would be placed in 44 acres of existing wetlands and 42 acres of existing open water. This fill will be placed behind a containment dike.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts to the Choctaw Point and Monroe Park area of Mobile Bay. These could include alternate sites, alternative site layouts or alternative operational methods.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, tribal governments and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant

issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, essential fish habitat and other marine habitat, air quality, cultural resources, recreation, wastewater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, Alabama State Port Authority, Alabama State Historic Preservation Officer, Alabama Department of Transportation and the City of Mobile.

4. The first scoping meeting will be held in conjunction with the DEIS for the restoration of areas adjacent to the Arlington and Garrows Bend Channels scoping meeting in February 2002 in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobil District by issuance of a Public Notice and/or notices in the local media.

5. It is anticipated that the DEIS will be made available for public review in October 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1650 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Southwest Florida Feasibility Study (SWFFS)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Feasibility Report and DEIS for the Southwest Florida Feasibility Study. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the SWFFS. The SWFFS will develop a comprehensive regional plan for addressing water resource problems and opportunities in southwest Florida.

FOR FURTHER INFORMATION CONTACT: John Kremer, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–232–3551.

SUPPLEMENTARY INFORMATION: a. Authorization: The C&SF Project was first authorized in 1948 to provide flood control, water control, water supply, and other services to an area that stretched from Orlando to Florida Bay. Section 309(l) of the Water Resources Development Act of 1992 (Pub. L. 102–580) provided authorization for the Restudy. The Restudy concluded with an Integrated Feasibility Report and Final Programmatic Environmental Impact Statement in April 1999. Section 528 of the Water Resources Development Act of 1996 (Pub. L. 104–303) authorizes several ecosystem restoration activities recommended by the Restudy, including the SWFFS.

b. Study Area: The SWFFS area covers approximately 4,300 square miles including all of Lee County, most of Collier and Hendry Counties, and portions of Charlotte, Glades, and Monroe Counties.

c. Project Scope: The SWFFS will develop alternative plans and recommendations for structural, non-structural, and operational modifications and improvements in the region. The study will evaluate alternatives based on their ability to improve water deliveries to the estuaries, manage agricultural and urban water supplies, protect and conserve water resources, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, improve water quality, and other performance criteria being developed by the Project Delivery Team.

d. Preliminary Alternatives: Like the Restudy, the Environmental Impact Statement (EIS) will evaluate the following structural and non-structural water resource related features: surface water storage, re-establishment of overland sheet flow, aquifer storage and recovery, stormwater treatment, wastewater treatment, water conservation programs, land acquisition, rehydration of wetlands, ecosystem needs, and operational changes to water management facilities.

e. Issues: The EIS will address the following issues: restoration of estuarine, aquatic, wetland, and upland ecosystems; water flows; future agricultural, environmental, and urban water demand and supply; socio-economic resources; aquifer recharge; conversion of public conservation lands to water storage areas; water quality; impacts to the estuaries; flood protection; the impacts of land acquisition on the tax base; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

f. Scoping: In July 2000, the Corps and SFWMD conducted the first round of public meetings with stakeholders, agencies, and other members of the public to gather technical input and documentation identifying the water resources problems, needs, and opportunities of southwest Florida. The second round of public meetings occurred in October 2000, to clarify and refine the issues brought up in the first round of meetings, and discuss the draft Project Management Plan (PMP).

A third round of meetings, scheduled to occur in February 2002, will provide an opportunity for public and agency input in response to this Notice. The meetings will discuss the feasibility phase of the study, including the National Environmental Policy Act (NEPA) process, and further gather public input. Other public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers. We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. DEIS Preparation: The integrated Feasibility Report, including a DEIS, is currently scheduled for publication in June 2005.

Dated: January 7, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–1641 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; 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 patent. 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.

Patent application Serial Number 09/978669 entitled "A Novel Assay For Detecting Immune Responses Involving Antigen Specific Cytokine and/or Antigen Specific Cytokine Secreting T-Cells" filed 18 October 2001 and its PCT/US01/32442. The present invention relates to a sensitive and specific assay and kit for IFN-gamma activity which is based on the detection of the chemokine monokine induced by gamma interferon (MIG) as a measure of the biological effect of IFN-gamma rather than direct quantitation of IFN-gamma or IFN-gamma secreting cells *per se*. Upregulation of MIG expression was observed following *in vitro* activation of PBMC with defined CD8+ T cell epitopes derived from influenza virus, CMV, or EBV, and in all cases this was antigen-specific, genetically restricted and dependent on both CD8+ T cells and IFN-gamma. Further, antigen-specific MIG expression was also demonstrated with *P. falciparum* CSP peptides, using PBMC from volunteers immunized with irradiated *P. falciparum* sporozoites. Responses as assessed by the MIG assay paralleled those detected by conventional IFN-gamma ELISPOT, but the magnitude of response and sensitivity of the MIG assay were superior. Our data validate this novel method for the detection of high as well as low levels of antigen-specific and genetically restricted IFN-gamma activity or MIG.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428 or e-Mail at *schlagelc@nmrc.navy.mil.*

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1555 Filed 1–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Inventions

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 available for licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 6,038,344: INTELLIGENT HYPERSENSOR PROCESSING SYSTEM (IHPS), (Navy Case No. 77,409). //U.S. Patent No. 6,167,156: COMPRESSION OF HYPERDATA WITH ORASIS MULTISEGMENT PATTERN SETS (CHOMPS), (Navy Case No. 78,739). //U.S. Patent No. 6,266,704: ONION ROUTING NETWORK FOR SECURELY MOVING DATA THROUGH COMMUNICATION NETWORKS, (Navy Case No. 78,415).//

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1556 Filed 1–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,025,036 entitled "Method of Producing a Film Coating by Matrix Pulsed Laser Deposition", Navy Case No. 78,117.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1557 Filed 1–22–02; 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 February 22, 2002.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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: January 16, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: New.

Title: Performance Report for the Leveraging Educational Assistance Program (LEAP) and Special Leveraging Educational Assistance Program (SLEAP) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Abstract: The LEAP and SLEAP programs use matching Federal and State Funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this performance report the states provide information the Department requires about the state's use of program funds in order to demonstrate compliance with the program's statutory and regulatory requirements. Federal program officials use the performance report data for monitoring program funds distribution. With the clearance of this collection, the Department is seeking to automate the performance reporting process for both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements; there are, however, additional items pertaining to the SLEAP program.

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 Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1588 Filed 1–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–041]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 16, 2002.

Take notice that on January 9, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of January 1, 2002:

Fourth Revised Sheet No. 20
Third Revised Sheet No. 20A
Third Revised Sheet No. 20B

Columbia Gulf states that it is filing these tariff sheets to correct an inadvertent error in its January 8, 2002 filing in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1583 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–176–002]

Georgia Straits Crossing Pipeline LP; Notice of Amendment to Application

January 16, 2002.

Take notice that on January 11, 2002, Georgia Strait Crossing Pipeline LP (GSX) filed an amendment to its application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing GSX to construct a total of 47.5 miles of pipeline from Sumas, Washington, to a marine interconnect with a Canadian pipeline built by GSX-Canada Limited Partnership (GSX-Canada). The project includes the installation of compression in Whatcom County, Washington, and will accommodate approximately 95,700 dekatherms per day of natural gas, all as more fully set forth in the application that is on file with the Commission and open to public inspection. Copies of this filing are on

file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

GSX proposes by this amendment to change the in-service date for the project from October 2003 to October 2004 and to revise the cost of the project from its original estimate of $90.7 million to $94.8 million, which results in an increase in the proposed rates of approximately 4.6 percent. The amendment does not modify the scope of the project. GSX states that it has concluded that regulatory approvals probably cannot be obtained in time to enable completion of the pipeline construction to meet the former October 2003 in-service date. GSX also states that by amendment dated December 20, 2001, the GSX Project Agreement has been revised to reflect the new schedule.

Any questions regarding the application should be directed to Gary Kotter, Manager, Certificates, at (801) 584–7117, GSX Pipeline, L.L.C., P.O. Box 58900, Salt Lake City, Utah 84158.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 6, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1579 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–048]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

January 16, 2002.

Take notice that on January 10, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. This filing is being submitted in compliance with the Commission's order issued on December 26, 2001, 97 FERC ¶ 61,370 (2001).

Special Negotiated Rate Between Gulf South Pipeline Company, LP and Willmut Gas Company

Gulf South states that copies of the filing 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.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1582 Filed 1–22–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–68–001]

Midwestern Gas Transmission Company; Notice of Compliance Tariff Filing

January 16, 2002.

Take notice that on January 9, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective January 1, 2002:

First Revised Sheet No. 80
First Revised Sheet No. 81

Midwestern states that the purpose of this filing is comply with the Commission's order dated December 28, 2001, 97 FERC 61,386, (December 28 Order), wherein the Commission directed Midwestern to file revised tariff sheets for Rate Schedule PAL.

Midwestern states that copies of this filing have been sent to all parties of record 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.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1585 Filed 1–22–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–049]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

January 16, 2002.

Take notice that on January 10, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26P.03, to be effective January 10, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1584 Filed 1–22–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–441–000]

Northern Natural Gas Company; Great Lakes Gas Transmission Limited Partnership; ANR Pipeline Company; Notice of Joint Application

January 16, 2002.

Take notice that on September 6, 2001, Northern Natural Gas Company (Northern) and Southern Natural Gas Company (Southern) filed a joint application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), requesting permission and approval to abandon service under an individually certificated exchange agreement, all as more fully set forth in the joint application which is on file with the Commission, and open to public inspection.

Specifically, Northern and Southern propose to abandon Rate Schedules X–107 in there FERC Gas Tariffs, Original Volumes No. 2. The parties mutually agree to the termination of the service under these Rate Schedules.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103 Street, Omaha, Nebraska 68124, or Patrick B. Pope, Vice President and General Manager, P.O. Box 2563, Birmingham, Alabama 35202–2563.

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 section 385.214 and section 385.211 of the Commission's Rules and Regulations. All such protests must be filed by February 6, 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 be viewed

on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's *Web* site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1580 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–580–005 and CP99–582–006]

Southern LNG Inc.; Notice of Compliance Filing

January 16, 2002.

Take notice that on January 10, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed sheets to become effective December 1, 2001:

Substitute Original Sheet No. 9
Substitute Original Sheet No. 23
Substitute Original Sheet No. 107
Substitute Original Sheet No. 133

SLNG states that the filing implements certain directives in the Commission's order issued on January 7, 2002 in the captioned proceeding.

SLNG states that copies of the filing will be served upon its customers and interested state commissions, and upon each party designated on the official service listed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1578 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–144–000]

Superior Natural Gas Corporation and Walter Oil & Gas Corporation, Complainant, v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company, and Williams Gulf Coast Gathering Company L.L.C., Respondents; Notice of Complaint

January 16, 2002.

Take notice that on January 15, 2002, Superior Natural Gas Corporation (Superior) and Walter Oil & Gas Corporation (Walter), pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, tendered for filing a Complaint against Williams Field Services Company, Williams Gas Processing—Gulf Coast Company, L.P., and Williams Gulf Coast Gathering Company, L.L.C. (collectively, Williams) for violating the Outer Continental Shelf Lands Act (OCSLA) in its operation of the North Padre Island Gathering System (North Padre System). Superior and Walter have requested that the Commission expeditiously issue an order, pursuant to the OCSLA and the Commission's implementing regulations.

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 January 24, 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 January 24, 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 and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1586 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–65–000, et al.]

CPV Cunningham Creek, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 15, 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. CPV Cunningham Creek, LLC

[Docket No. EG02–65–000]

Take notice that on January 8, 2002, CPV Cunningham Creek, LLC (CPV Cunningham Creek or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 550 MW natural gas-fired combined cycle generating facility (Facility) to be located in Fluvanna County, Virginia. The Facility will consist of two (2) gas combustion turbines, two (2) heat recovery steam generators and one (1) steam turbine. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the

Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CPV Smyth, LLC

[Docket No. EG02–66–000]

Take notice that on January 8, 2002, CPV Smyth, LLC (CPV Smyth or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 780 MW natural gas-fired combined cycle generating facility (Facility) to be located in Smyth County, Virginia. The Facility will be a natural gas-fired combined-cycle electric generating facility, consisting of three (3) gas combustion turbines, three (3) heat recovery steam generators and three (3) steam turbines. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CPV Warren, LLC

[Docket No. EG02–67–000]

Take notice that on January 8, 2002, CPV Warren, LLC (CPV Warren or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 520 MW natural gas-fired combined cycle generating facility ("Facility") to be located in Warren County, Virginia. The Facility will consist of two (2) gas combustion turbines, two (2) heat recovery steam generators, and two (2) steam turbines. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–3142–005]

Take notice that on January 9, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a redlined and clean version of Substitute First Revised Sheet No. 363 to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, which was filed with the Commission on December 6, 2001 and contained a typographical error. The Midwest ISO filing in this proceeding regarded, among other things, Attachments A and B (Forms of Service Agreement for Non-Firm, Short-Term Firm and Long-Term Firm Point-to-Point Transmission Service under the Midwest ISO OATT.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.Midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: January 30, 2002.

5. American Transmission Company LLC

[Docket No. ER02–78–001]

Take notice that on January 8, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Compliance Filing in compliance with the Commission's Letter Order Accepting Transfer of Rate Schedules. 97 FERC ¶ 61,260 (2001).

Comment Date: January 29, 2002.

6. Rathdrum Power, LLC

[Docket No. ER02–216–001]

Take notice that on January 9, 2002, Rathdrum Power, LLC (Rathdrum) submitted a corrected version of its October 31, 2001 filing of the fourth amendment to the long-term power purchase agreement between Rathdrum and Avista Energy, Inc., as assigned to Avista Turbine Power, Inc., for the sale of power under Rathdrum's market-based rate tariff with the appropriate FERC designations as required by the December 11, 2001 order issued in this docket.

Comment Date: January 30, 2002.

7. New England Power Pool

[Docket No. ER02–581–001]

Take notice that on January 9, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance definitive Standstill Agreements consistent with a term sheet that was previously filed with the Commission, suspended and permitted to become effective on an interim basis. These arrangements implement alternative payment and financial assurance arrangements with Enron Power Marketing, Inc. (EPMI), Enron Energy Marketing Corp. (EEMC), and Enron Energy Services, Inc. (EESI) with respect to transactions occurring on and after December 21, 2001 and permit the immediate and automatic suspension and subsequent termination of participation by EPMI, EEMC and EESI, as the case may be, as members in NEPOOL should there be a failure to make a required payment under the filed arrangements.

A December 21, 2001 effective date was requested for the Standstill Agreements, as contemplated by the previously filed term sheet.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 30, 2002.

8. Duke Energy Corporation

[Docket No. ER02–710–000]

Take notice that on January 7, 2002, as amended on January 8, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised service agreement (First Revised Service

Agreement No. 170) with Rockingham Power L.L.C. in this proceeding.

Comment Date: January 29, 2002.

9. Xcel Energy Services, Inc.

[Docket No. ER02–717–000]

Take notice that on January 8, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern Sates Power Company (Wisconsin) (collectively, NSP) submitted for filing a Form of Service Agreement with EnergyUSA-TPC Corp. (EnergyUSA), which is accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6).

Xes request that this agreement become effective on December 13, 2001.

Comment Date: January 29, 2002.

10. Unitil Power Corp.

[Docket No. ER02–718–000]

Take notice that on January 8, 2002 Unitil Power Corp. (UPC) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted service agreement with Enron Power Marketing, Inc. for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

Comment Date: January 29, 2002.

11. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–719–000]

Take notice that on January 9, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *OGE Energy Resources, Inc. and Florida Power Corporation.* Ameren Energy seeks Commission acceptance of these service agreements effective November 1, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: January 29, 2002.

12. Northern Indiana Public Service Company

[Docket No. ER02–721–000]

Take notice that on January 8, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Aquila Energy Marketing Corporation (Aquila).

Northern Indiana has requested an effective date of January 7, 2002.

Copies of this filing have been sent to Aquila, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: January 29, 2002.

13. Emera Energy Services, Inc.

[Docket No. ER02–723–000]

Take notice that on January 8, 2002, Emera Energy Services, Inc.(EES), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Order Accepting Initial Rate Schedule For Filing.

Comment Date: January 29, 2002.

14. Wisconsin Power and Light Company

[Docket No. ER02–724–000]

Take notice that on January 10, 2002, Wisconsin Power and Light Company (WPL), tendered for filing a Service Agreement with WPPI and request to terminate Service Agreement No. 39 under FERC Electric Tariff, Original Volume No. 5.

WPL indicates that copies of the filing have been provided to WPPI, Prairie du Sac and the Public Service Commission of Wisconsin.

Comment Date: January 31, 2002.

15. Great Plains Power Incorporated

[Docket No. ER02–725–000]

Take notice that on January 9, 2002, Great Plains Power Incorporated (GPPI) tendered for filing an application for authorization to sell power at market-based rates.

Copies of this filing have been served on the Kansas Corporation Commission and the Missouri Public Service Commission.

Comment Date: January 30, 2002.

16. Nine Mile Point Nuclear Station, LLC

[Docket No. ER02–726–000]

Take notice that on January 9, 2002, Nine Mile Point Nuclear Station, LLC (Nine Mile LLC) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations, an Amended and Restated Operating Agreement for Nine Mile Point Unit No. 2 Nuclear Generating Facility (the Agreement) by and between Nine Mile LLC and Long Island Lighting Company (d/b/a LIPA). The Agreement governs the terms and conditions pursuant to which Nine Mile LLC will operate and maintain the Nine Mile Point Unit No. 2 (NMP–2) nuclear generating facility, including certain limited interconnection facilities appurtenant to NMP–2.

Comment Date: January 30, 2002.

17. Exelon Generation Company, LLC

[Docket No. ER02–727–000]

Take notice that on January 9, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Lower Colorado River Authority under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 30, 2002.

18. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–728–000]

Take notice that on January 9, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Dynegy Power Marketing, Inc.

Ameren Energy seeks Commission acceptance of these service agreements effective December 12, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: January 30, 2002.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–729–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide interconnection and transmission service to Keyspan/Long Island Power Authority (Keyspan). The Supplement provides for a decrease in the annual fixed rate carrying charges.

Con Edison has requested that this decrease take effect as of October 1, 2002.

Con Edison states that a copy of this filing has been served by mail upon Keyspan.

Comment Date: January 29, 2002.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–730–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH).

Con Edison has requested that this supplement take effect as of September 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment Date: January 29, 2002.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–731–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA).

Con Edison has requested that the Supplement take effect as of October 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment Date: January 29, 2002.

22. Columbia Energy Power Marketing Corporation

[Docket No. ER02–733–000]

Take notice that on January 9, 2002, Columbia Energy Power Marketing Corporation (EPM) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 1 (market-based rate authority).

CEPM states that, as it is not regulated by a state commission, has no long-term customers, and has no outstanding market-based rate transactions, it has not served copies of this filing upon any entity.

Comment Date: January 30, 2002.

23. Boston Edison Company

[Docket No. ER02–734–000]

Take notice that on January 9, 2002, Boston Edison Company (Boston Edison) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 197, to an Interconnection Agreement between Boston Edison and Cabot Power Corporation (Cabot) relating to interconnection work for Cabot's Island End station.

Boston Edison requests an effective date of October 9, 2001.

Boston Edison states that it has served a copy of the filing on Cabot and the Massachusetts Department of Telecommunications and Energy.

Comment Date: January 30, 2002.

24. Conectiv Delmarva Generation, Inc.

[Docket No. ER02–735–000]

Take notice that on January 9, 2002, Conectiv Delmarva Generation, Inc. (CDG), filed a revised tolling agreement between itself and Conectiv Energy Supply, Inc. (the Revised Tolling Agreement). The Revised Tolling Agreement is a service agreement under the CDG's market-based rate tariff, FERC Electric Tariff, First Revised Volume No. 1.

CDG requests waiver of the Commission's notice of filing requirements to allow the Revised Tolling Agreement to become effective on January 10, 2002, the day after filing.

Comment Date: January 30, 2002.

25. New York State Electric & Gas Corporation

[Docket No. ER02–736–000]

Take notice that on January 9, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative). The proposed supplement would decrease revenues by $424.50 based on the twelve month period ending December 31, 2000.

This rate filing is made pursuant to section 1 (c) and section 3 (a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 2000. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2002.

Copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 30, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1577 Filed 1–22–02; 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

January 16, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No:* 485–052.

c. *Date filed:* December 4, 2001.

d. *Applicant:* Georgia Power Co.

e. *Name of Project:* Bartletts Ferry Project.

f. *Location:* The project is located on Bartletts Ferry Reservoir, on the Layfield

Tributary of the Chattahoochee River, Harris County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Robert L. Boyer, Vice President—#10170, 241 Ralph McGill Blvd., Atlanta, GA 30308–3374, (404) 506–7892.

i. *FERC Contact:* Any questions on this notice should be addressed to Hillary Berlin at 202–219–0038 or e-mail address: hillary.berlin@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene and protest:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Mr. Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (485–052) on any comments or motions filed.

k. *Description of Application:* The licensee is requesting to increase the maximum water withdrawal rate from the Barletts Ferry reservoir from the current 11,120,446 gallons per day (per agreement with the City of Opelika Water Works Board) to 42,000,000 gallons per day. The licensee has consulted with the appropriate resource agencies, and their application includes comments from the Alabama Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service.

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, D.C. 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "DNUMocket " and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1581 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–7]

Request for Applications: Decision-Making and Valuation for Environmental Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of Requests for Applications.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies, the U.S. Environmental Protection Agency and the National Science Foundation, are soliciting individual research proposals of up to 3 years duration, that will contribute to the development of practical approaches for estimating the benefits and costs of environmental policies and improving decision making about environmental issues. This document details the requirements for applications for research support that will be considered by the Federal research partnership. Grants will be awarded following peer review.

DATES: Applications must be received by EPA/NCER no later than 4 p.m. Eastern Time on May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Technical Contacts: Susan Carrillo; Phone: (202) 564–4664; e-mail: *carrillo.susan@epa.gov,* Robert O'Connor; Phone: (703) 292–7263; e-mail: *roconnor@nsf.gov,* Cheryl Eavey; Phone: (703) 292–7269; email *ceavey@nsf.gov* Administrative contact: Susan Carrillo; Phone: (202) 564–4664; email: *carrillo.susan@epa.gov,* The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncerqa,* under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncerqa/rfa/forms/downlf.html.* Forms may be printed from this site.

Dated: January 15, 2002.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–1617 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–6]

Termination of Pesticide Producing Establishments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Agency's intention to terminate a number of pesticide producing establishment registrations 45 days following the date of publication of this document for failure to file annual pesticide producing reports as required by section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The list of domestic and foreign pesticide producing establishments appearing in this document will have their establishment registration terminated March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Domestic pesticide producing establishments should contact the EPA Regional office having jurisdiction for the state where their parent company is located. A listing of the EPA Regional Offices is included in this document.

Foreign pesticide producing establishments should contact: Carol L. Buckingham, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Agriculture Division (2225A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, USA, telephone: (202) 564–5008, fax: (202) 564–0085; e-mail: *buckingham.carol@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 7 of FIFRA requires that all establishments that produce any pesticide or active ingredient used in producing a pesticide, or device subject to this Act be registered with the Agency, and that all such establishments submit annual production reports to the Agency. The EPA regulations at 40 CFR part 167 establish requirements concerning these annual reports and the information that must be in annual reports (40 CFR 167.85). The regulations state that establishment registrations will be subject to termination if an annual report is not submitted (40 CFR 167.20(f)).

Notwithstanding the requirements identified above, no annual production reports were received from the establishments identified in this document in 1997, 1998, 1999 and/or 2000. The mailings sent to the last reported address of the companies identified in this document were returned unopened to the Agency, with indications of "undeliverable" or "address unknown" as the reason for the return. Subsequent attempts to locate a number of the identified companies and establishments were unsuccessful. Additionally, some of the companies and/or establishments are out of business. Therefore, the Agency is terminating, without further notice, the registrations of the identified establishments pursuant to 40 CFR 167.20(f) for failure to submit the annual reports in 1997, 1998, 1999 and/or 2000.

Following termination of each domestic pesticide producing establishment's registration, sale or distribution in the United States of any pesticide product in an establishment subsequent to the termination of that establishment's registration will be considered unlawful and a violation of section 12 of FIFRA, subject to possible civil and/or criminal penalties. This document will not preclude the Agency from seeking other appropriate remedies necessary for compliance with FIFRA.

Following termination of each foreign pesticide producing establishment's registration, no pesticide product produced in that establishment may be imported into the United States.

ENVIRONMENTAL PROTECTION AGENCY LIST OF EPA REGIONAL OFFICES AND RESPONSIBLE CONTACTS

EPA regional office	States
U.S. EPA, Region 1, 1 Congress Street, Suite 1100 (SEA), Boston MA 02203–2211, ATTN: Lee Weller, Telephone: 617–918–1849.	CT, MA, ME, NH, RI, VT
U.S. EPA, Region 2, Pesticides Team (MS–500), 2890 Woodbridge Avenue, Bldg. 5, Edison, NJ 08337–3679, ATTN: David Salkie, Telephone: 732–321–6750.	NJ, NY, PR, VI
U.S. EPA, Region 3, Pesticides Programs (3WC32), 1650 Arch Street, Philadelphia, PA 19103–2029, ATTN: Kyla Townsend-McIntyre, Telephone: 215–814–2045.	DE, DC, MD, PA, VA, WV
U.S. EPA, Region 4, AFC Pesticides Section (APTMD), 61 Forsyth Street, SW, Atlanta, GA 30303–8960, ATTN: Jacquelyn Wilkerson, Telephone: 404–562–9011.	AL, FL, GA, KY, MS, NC, SC, TN
U.S. EPA, Region 5, PTES (DT–8J), 77 W. Jackson Blvd., Chicago, IL 60604–3507, ATTN: Gail Muffitt, Telephone: 312–886–6008.	IL, IN, MI, MN, OH, WI
U.S. EPA, Region 6, Pesticides Section (6PD–P), 1445 Ross Avenue, Dallas, TX 75202–2733, ATTN: James Redd, Telephone: 214–665–7560.	AR, LA, NM, OK, TX
U.S. EPA, Region 7, (WWPD/PEST), 901 N. 5th Street, Kansas City, KS 66101, ATTN: Lou Banks, Telephone: 913–551–7125.	IA, KS, MO, NE
U.S. EPA, Region 8, Enforcement Division (ENF–PT), 999 18th Street, Suite 300, Denver, CO 80202–2466, ATTN: Cornelia Maes, Telephone: 303–312–6049.	CO, MT, ND, SD, UT, WY
U.S. EPA, Region 9, Pesticides Section (CMD–4–3), 75 Hawthorne Street, San Francisco, CA 94105, ATTN: Glenda Dugan, Telephone: 415–947–4204.	AZ, CA, HI, NV, AS, GU
U.S. EPA, Region 10, Pesticides Unit (ECO–084), 1200 Sixth Avenue, Seattle, WA 98101, ATTN: Eva Chun, Telephone: 206–553–1970.	AK, ID, OR, WA

EPA Office and Responsible Contact for All Foreign Pesticide Producers

United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture Division (2225A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 USA, Attn: Carol L. Buckingham, Telephone 202–564–5008, Fax: 202–564–0085, e-mail: *buckingham.carol@epa.gov.* ½

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
EPA Region 1: (No Listings)	
EPA Region 2:	
Seacoast Laboratories, Old Georges Road, P.O. Box 373, Dayton, NJ 08810.	001159–NJ–001, Seacoast Laboratories, Inc., Old Georges Road, Dayton, NJ 08810.
OSR Cleaning Specialties Co. Inc., 18 Bridge Street, Brooklyn, NY 11202.	004029–NY–001, OSR Cleaning Specialties Co. Inc., 18 Bridge Street, Brooklyn, NY 11202.
Corbin Chemical Corp., 126 25th Street, Brooklyn, NY 11232	012325–NY–001, Corbin Chemical Corp., 126 25th Street, Brooklyn, NY 11232.
EPA Region 3:	

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Sunshine Quality Products, PO Box 197, Industrial Park, Frackville, PA 17931.	041260–PA–001, SQP Transition Corporation, PO Box 197, Frackville Industrial Park, Frackville, PA 17931.
McBroom Pool Products, Inc., 113 S. Witchduck Road, Virginia Beach, VA 23462.	050778–VA–001, McBroom Pool Products, Inc., 113 S. Witchduck Road, Virginia Beach, VA 23462.
Augias Environmental Corporation. 13884 Park Center Road, Herndon, VA 22071.	066376–VA–001, Augias Environmental Corporation, 13884 Park Center Road, Herndon, VA 22071.
Barnacle Ban Corporation, 2275 Swallow Hill Road, Bldg. 2500, Pittsburgh, PA 15220.	068316–PA–001, Barnacle Ban Corporation, 2275 Swallow Hill Road, Bldg. 2500, Pittsburgh, PA 15220.
EPA Region 4:	
Steve's Pool Service, 11415 Road, Largo, FL 33773	057179–FL–001, Steve's Pool Service, 11415 Starkey Starkey Road, Largo, FL 33773.
Imperial Custom Packaging Inc., PO Box 1141, Fort Lauderdale, FL 33302.	070504–FL–001, Imperial Custom Packaging Inc., 716 NW 7th Avenue, Fort Lauderdale, FL 33311.
Vision Technologies Inc., PO Box 750665, Memphis, TN 38175	070798–TN–001, Vision Technologies Inc., 4050 Getwell Road, Memphis, TN 38118.
Outback Pools, 4729 Alabama Highway, Rome, GA 30165	071813–GA–001, Outback Pools, 4729 Alabama Highway, Rome, GA 30165.
Harry's Place, 14551 NE 145th Avenue, Silver Springs, FL 34488	072110–FL–001, Harry's Place, 14551 NE 145th Avenue, Silver Springs, FL 34488.
Chempro International, 6995 NW 82nd Avenue, Suite 37, Miami, FL 33166.	073555–FL–001, Chempro International, 6995 NW 82nd Avenue, Suite 37, Miami, FL 33166.
EPA Region 5:	
Archem Corporation, 11th Street, PO Box 767, Portsmouth, OH 45662.	007122–OH–001, Archem Corporation, U.S. Rt. 23 N, Portsmouth, OH 45662.
Uniclean, Inc., P.O. Box 166, North Olmsted, OH 44070	007392–OH–001, Uniclean, Inc., 5200 Mills Industrial Parkway, North Ridgeville, OH 44039.
Countrymark Cooperative, Inc., 4565 Columbus Pike, Delaware, OH 43015.	033272–OH–001, Land O' Lakes, 602 Findlay Road, Fostoria, OH 44830.
	033272–OH–011, Countrymark Cooperative, Inc, 601 Goodrich Road, Bellevue, OH 44811.
Ajax Adhesives Industries, 1314 W. 21st Street, Chicago, IL 60608	045488–IL–001, Ajax Adhesives Industries, 1314 W. 21st Street, Chicago, IL 60608.
Central Indiana Farm Bureau Coop, Inc., 1530 W. Epler Avenue, Indianapolis, IN 46217.	053672–IN–005, Cumberland Central Indiana Farm Bureau, 229 S. Muessing, Indianapolis, IN 46229.
R. Carlson Company, Inc., 421 Demers Avenue, E Grand Forks, MN 56721.	055460–MN–001, R. Carlson Co., Inc., 317 W. Robert Street, Crookston, MN 56716.
A–G Coopertive Creamery, 502 W. Main Street, Arcadia, WI 54612.	057863–WI–004, A–G Co-Op, Winnebago Rd. Galesville, WI 54630.
Schultz Agri-Service, Inc., Hwy. 89 South, PO Box 56, Lake Mills, WI 53551.	062157–WI–001, Schultz Agri-Service, Inc., 1324 S. Main Street, Lake Mills, WI 53551.
LaFleur Pool Service, Inc., 555 S. River Street, Batavia, IL 60510	062652–IL–001, LaFleur Pool Service, Inc., 555 S. River Street, Batavia, IL 60510.
School Grain Inc., 5085 S. 500 West, Jamestown, IN 46147	063444–IN–001, School Grain, Inc., Route 1 500 S. & 500 W., Jamestown, IN 46147.
Omega Laboratories, Inc., 2121 Brookshire Road, Fairlawn, OH 44313.	064152–OH–001, Omega Laboratories, Inc., 200 Industrial Parkway, Chargin Falls, OH 44022.
Bio-Medica Concepts, 4503 Williamsburg Road NW, Cincinnati, OH 45215.	064233–OH–001, Bio-Medica Concepts, 8645–B Cincinnati-Columbus Road, Cincinnati, OH 45069.
Maynard Mickelson Co., 1005½ Lacrosse Street, Lacrosse, WI 54601.	064360–WI–001, Maynard Mickelson Co., 1005½ Lacrosse Street, Lacrosse, WI 54601.
H&S Chemical Co., Inc., PO Box 17186, Cincinnati, OH 45217	065169–OH–001, H&S Chemical Co., Inc., 300 Murray Road, Cincinnati, OH 45217.
Farmers Cooperative Elevator Co., 30 Spring Street, PO Box 247, Kent City, MI 49330.	065408–MI–001, Farmers Cooperative Elevator Co., 30 Spring Street, Kent, Michigan 49330.
Wayzata Bay Products, Inc., PO Box 217, St. Bonifacius, MN .55375.	066148–MN–001, Wayzata Bay Products, Inc., 4358 S. County Road 92, St. Bonifacius, MN 55375.
BCW, Inc., PO Box 174, Pendleton, IN 46064	066154–IN–001, BCW, Inc., 6368 So SR 67 Pendleton, IN 46064.
Sacon Laboratories International, Inc., 459 Busse Road, Elk Grove Village, IL 60007.	066389–IL–001, Sacon Laboratories International, Inc., 459 Busse Road, Elk Grove Village, IL 60007.
Associated Chemical & Equipment, 22401 Industrial Blvd., Rogers, MN 55374.	066698–MN–001, Associated Chemical & Equipment, 22401 Industrial Blvd., Rogers, MN 55374.
Whitlock Group, PO Box 4141, Des Plaines, IL 60016	068248–IL–001, Whitlock Group, 915 Pingree Road, Crystal Lake, IL 60014.
Nu Look Enterprises, 2900 17th Avenue South, Minneapolis, MN 55407.	068806–MN–001, Nu Look Enterprises, 6980 Oxford Street, Minneapolis, MN 55426.
Solution Company LLC, 529 Crescent Avenue, South Bend, IN 46607.	Solution Company LLC, 529 Crescent Avenue, South Bend, IN 46607.
Packaging Technologies Group, Inc., 4230 Lee Avenue, Gurnee, IL 60031.	Packaging Technologies Group, Inc., 4230 Lee Avenue, Gurnee, IL 60031.
Chem-I, Inc., 6215 Cedar Avenue, Cleveland, OH 44103	Chem-I, Inc., 6215 Cedar Avenue, Cleveland, OH 44103.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Alexis Chemical Co., 310 25th Avenue, Bellwood, IL 60104	071163–IL–001, Alexis Chemical Co., 310 25th Avenue, Bellwood, IL 60104.
Warren Industries, Inc., 3100 Mt. Pleasant Street, Racine, WI 53404.	073434–WI–002, Warren Industries, Inc., 2825 Four Mile Road, Racine, WI 53404.
EPA Region 6: (No Listings)	
EPA Region 7:	
Universal Technology Inc, PO Box 6, Carl Junction, MO 64834	052585–MO–001, Universal Technology Inc., 813 Joplin Street, Carl Junction, MO 64834.
Crookston Grain & Fertilizer, Box 248, Crookston, NE 69212	056037–NB–001, Crookston Grain & Fertilizer, 1st & Main, Crookston, NE 69212.
Johnson's Val-U-Line, Inc., PO Box 275, Auxvasse, MO 65231	063437–MO–001, Johnson's Val-U-Line, Inc., Hwy 54 North, Auxvasse, MO 65231.
Vanguard Chemical Corp., 1110 Washington Avenue, St. Louis, MO 63101.	065226–MO–001, Vanguard Chemical Corp., 1110 Washington Avenue, St. Louis, MO 63101.
Spray Technology International Ltd., 1851 110th Street, Bode, IA 50519.	069628–IA–001, Spray Technology, 1851 110th Street, Bode, IA 50519.
Barnard Grain Co., PO Box 88, Barnard, KS 67418	070008–KS–002, Jewell Agri Service, 620 North Sheridan, Jewell, KS 66949–0576.
EPA Region 8:	
HBH Enterprises/Lamar Aquarium, 820 W. Center Street, Provo, UT 84601.	065643–UT–001, Lamar Aquarium Products, 820 W. Center Street, Provo, UT 84601.
EPA Region 9:	
ABA–TRON Industries, Inc., PO Box 6341, Beverly Hills, CA 91203.	045265–CA–001, ABA–TRON Industries, Inc., 651 W. California Avenue, Suite 2, Glendale, CA 91203.
Focus 21 International, 2755 Dos Aarons Way, Vista, CA 92083	064048–CA–001, Focus 21 International, 2755 Dos Aarons Way, Vista, CA 92083.
H.B. Gordon Manufacturing Company, 400 N. Nash Street, El Segundo, CA 90245.	064055–CA–001, H.B. Gordon Manufacturing Company, 400 N. Nash Street, El Segundo, CA 90245.
Aquasave Pool & Water Technology, 825 S. 7th Street, Phoenix, AZ 85036.	065955–AZ–001, Aquasave Pool & Water Technology, 825 S. 7th Street, Phoenix, AZ 85036.
Fleaxperts, Inc., 8993 Complex Drive, San Diego, CA 92123	066144–CA–001, Fleaxperts, Inc., 8993 Complex Drive, San Diego, CA 92123.
Copperlok Systems, 4181 Lincoln Avenue, Culver City, CA 90230	067850–CA–001, Copperlok Systems, 11900 Jefferson Boulevard, Culver City, CA 90230.
Sakura, 2001 International Corp., 1622 Hallgreen Drive, Walnut, CA 91789.	068270–CA–001, Sakura, 2001 International Corp., 1622 Hallgreen Drive, Walnut, CA 91789.
Inland Products, Inc., 2304 W. Fillmore, Phoenix, AZ 85036	069271–AZ–001, Inland Products, Inc., 2304 W. Fillmore, Phoenix, AZ 85036.
Wild Products Group, 2485 E. Vemon Avenue, Vemon, CA 90058	070257–CA–001, Wild Products Group, 2485 E. Vemon Avenue, Vemon, CA 90058.
Wiz Out, Inc., 1255 Activity Drive 'A', Vista, CA 92083	070822–CA–001, Wiz Out, Inc., 1255 Activity Drive 'A', Vista, CA 92083.
EPA Region 10:	
DRC Company, 408 Metcalf Street, Sedro Woolley, WA 98284	040685–WA–002, Kemrite Inc., 408 Metcalf Street, Sedro Woolley, WA 98284.
Power One Industrial Supplies, Box 804, Baker City, OR 97914	067718–OR–001, Power One Industrial Supplies, 2700 Broadway, Baker City, OR 97914.
M.S. Magnetic Technology, 621 5th Street, SW, Puyallup, WA 98371.	068045–WA–001, M.S. Magnetic Technology, 621 5th Street, SW, Puyallup, WA 98371.
CSI, P.O. Box 3631, Seattle, WA 98124	070330–WA–001, CSI, 5109 238th Place SW, Mountlake Terrace, WA 98043.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Nippon Kayaku c/o Nichimen (Che Dept), 1185–6th Avenue, New York, NY 10036.	033649–JP–001, Nippon Kayaku, New Kaijo BL. 1–2–1 Maru Chiy, Tokyo, Japan.
	033649–JP–002, Kashima Plant, Nippon Kayaku Co., ltd., 6, Snayama Kasaki-cho, Kashima, Ibaragi-Ken, Japan.
	033649–JP–003, Ooji Plant, Nippon Kayaku Co., Ltd., 31–12, Shimo 3-Chome, Kita-ku, Tokyo, Japan.
Chemol RT c/o Agrichemical Services Inc., c/o Agrichemical Services, Inc., PO Box 808, Isle of Palms, SC 29451.	033675–HG–001, Chemol RT, PMV Sajobabony, 3792 Sajobabony, Hungary.
Sandoz Agro. Mktg & Logistics, Basle CH 4002, Basle, Switzerland	034818–SW–001, Sandoz Ltd., Agro Division, Lichtstrasse 35, Basel CH–4002, Switzerland.
	034818–SW–002, Sandoz Ltd., Agro Division, Rothausstrasse 61, Muttenz CH–4132, Switzerland.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Industrias Agricolas S.A. DE C.V., PO Box 507, Calexico, CA 92232–0507.	036331–MX–001, Industrias Agricolas, S.A. DE. C.V., KM. 14.5 Carreteraa San Louis, Mexicali. B.C. C.P. Mexico.
Calabrian Chemicals, c/o Laura Gimpelson, 15600 J.F. Kennedy Boulevard, Suite 570, Houston, TX 77032.	039295–BG–001, Chem Combine, C Srednogorie, Street not shown, Srednogorie, Bulgaria.
	039295–MEX–001, Proveedora Quimica IND, Av Industrias 4318, Chihuahua 31430, Mexico.
	039295–PE–001, Sulfato De Cobre, Av. Tacna 543, Lima, Peru.
	039295–UR–001, Sojuzchimexport, 121200 Agro Chim Dept, Moscow, Russia.
	039295–YG–001, Zupa, Not shown, Krusevac, Yugoslavia.
Delmar Chemicals Inc., PO Box 200, Lasalle, Quebec, Canada H8R 3V3.	043406–CN–001, Delmar Chemicals, Inc., 9321 Airlie Street, Lasalle, Quebec, Canada H8R 2B2.
Sun Ko Chemical Co. Ltd., No. 12, Lane 42 Jen-Hua Road, Ta-Li Hisang Taichng, Taiwan.	043842–TW–001, Sun Ko Chemical Co. Ltd., No.53, Chung-Ming Road, Taichung 403, R.O.C., Taiwan.
	043842–WG–001, Riedel-Haen Ag, Wunstorfer Strass 40 Seelze, Seelze 1, Germany.
Commercial Manu S.A., Casilla 715, Lima 100, Peru	046821–PE–001, Commerical Manu S.A., Casilla 715, Lima 100, Peru.
Mansion Enterprises California, Inc., 525 De La Fuente, Monterey Park, CA 91754.	049573–TW–001, New Mansion Industrial Co., 93–13, Ta Pien Tou, Hou Chuo Will, San Chih Tsiang, Taiwan.
Nichimen America Inc. Attn: L. Ossi, 1185 Avenue of the Americas, New York, NY 10036.	050269–KR–001, Seo Han Chemical, 363–3, Mae Tan Dong, Kyung Gi Do, Su Weon City, Korea.
Harvex Agromart Inc, PO Box 220, Kemptville, Ontario Canada K0G1J0.	052047–CN–001, Harvex Agromart Inc., Hwy. 43 East, Kemptville, Ontario Canada K0G1JO.
Kingshome, Ltd., 10–5, 750, Tun Hwa S. Road, (World Bldg), Taipei, Taiwan.	052773–TW–001, 7–4F No. 128 Tung Hwa S Road, Sec 2, Taspon Tawan ROC, Taiwan.
Agroquimicos Eq. c/o Bruce Knoblock, 11741 E. Tanque, Tuscon, AZ 85749.	054675–MX–001, Agroquimicas y Equipos SA DE CV, Av. Jose Escandon Y Helguera Cruz N S, H. Matamoros, Tam. Mexico.
Nature Pool (Canada), Inc., 2155 Dunwin Drive, Ste #6, Mississauga, Canada L5L4M1.	056954–CN–001, Owl Associates Ltd., 2155 Dunwin Drive, Ste #6, Mississauga, Canada L5L4M1.
Allseasons Environmental Control Inc., 10 Alden Road, Unit 6, Markham, Ontario Canada L3R 2SI.	061382–CN–001, Allseasons Environmental Control Inc., 11 Dominic Street, Unit 6, Bishop Falls, Newfoundland, Canada.
Caribbean Chemicals Industries Ltd., Carmichael House, St. George, Barbados.	062546–WN–001, Caribbean Chemicals Industries Ltd., Carmichael House, St. George, Barbados.
Noranda Sales Corporation Ltd., 12640 West Cedar Drive, Lakewood, CO 80228.	062589–CN–001, Canadian Electrolytic Zinc Limited, 860 Cadieux Boulevard, Valleyfield, Canada.
	062589–CAN–002, Horne Smelter, 101 Avenue Portelance, Rouyn-Normanda, Canada.
	062589–CAN–003, Gaspe Mines Division, Murdochville, Murdochville, Canada.
	062589–CAN–004, Brunswick Mining & Smelting Corp Ltd. Belledune, Belledune, Canada.
Wedeco Environmental, Inc., 4958 Hammermill Road, Tucker, GA 30084–6077.	063804–WG–001, Wedeco GMBH, Daimlerstrasse 5, D–4900 Herford, Germany.
Norchem Ind (Canada) Inc. Diversey Corp., 12025 Tech Center Drive, Livonia, MI 48150.	063957–CN–001, Norchem Ind. (Canada) Inc., Attn: H P Kats, 950 Michelin, Vimont, Laval, Quebec H7L 927 Canada.
Raab Ingenieria Ltda, c/o Roger Tenney, 4900 W Howe Road, Dewitt, MI 48820.	064037–CH–001, Raab Ingenieria Ltda, Vicuna Mackenna N 3551, Santiago, Chile.
Solterra Minerals Inc. c/o Solterra Minerals Inc. (attn: Ray Lee), PO Box 650, Crossfield, Alberta, T0M 0S0 Canada.	064788–CN–001, Solterra Minerals Inc, 702 McCool Street, Crossfield, Alberta, T0M 0S0 Canada.
Tramsa, Av. Arenales No. 1868, Av. Lima 14, Peru	066012–PE–001, Tramsa, Av. Arenales No. 1868, Av. Lima 14, Peru.
Agrivalu Technologies Corporation, 766 Waterford Avenue, Winnipeg, Manitoba Canada.	066291–CN–001, Agrivalu Technologies Corp, 766 Waterford Avenue, Winnipeg, Manitobia, Canada.
	066291–CN–002, Indent Technologies Corp., 435 Ellice Avenue, Winnipeg, Manitoba, Canada.
	066291–CN–003, Technologies Brokerage Inc., 745 Logan Avenue, Winnipeg, Manitoba, Canada.
Laboratorios Agroenzymas S.A. DE C.V., Hormona No. 9 Altos, Col. San Andres, Ato Naucalpan, Mexico.	067194–MX–001, Laboratorios Agroenzymas S.A. DE C.V., Eje North N. 3 sSgunda Seccion, Ciudad 1, Naucalpan, Mexico.
G.I. & J.P. Jefferys—"Jantra Moon", c/o Tom Morgan, 19718 Auburn park, Spring, TX 77379.	067290–AU–001, Moonbell, 1 Beveridge Road, 4164 Q'land, Thornlands, Australia.
Wilmarg Enterprise Ltd., 80 Nashdene Road, Unit 21, Scarborough, Ontario M1V 5G4 Canada.	067308–CN–001, Wilmarg Enterprise Ltd. 80 Nashdene Road, Unit 21, Scarborough, Ontario M1V 5G4 Canada.
Tata Oil Mills Co., Ltd c/o Agridyne Technologies, 2401 S. Foothill Drive, Salt Lake City, UT 84109.	067610–IY–001, The Tata Oil Mills Co., Ltd., Tatapuram, PO Cochin, 682014 Kapala, India.
Hankin Atlas Ozone Systems Ltd. c/o Hankin Atlas Industries Ltd., 639 5th Avenue, SW, Suite 210, Calgary, Alberta T2P 0M9, Canada.	067792–CN–001, Hankin Atlas Ozone Systems Ltd., 690 Progress Avenue, Unit 12, Scarborough, Ontario M1H 3A6 Canada.
Litehouse Ind. Ltd., c/o Jones Chemicals Inc., 80 Munson Street, Leroy, NY 14482.	068433–CAN–001, Litehouse Ind. Ltd., 2560 Mattheson Boulevard, E-Unit 117, Mississauga Canada.
Ozone by Nicholas Inc. c/o Sam-Son Dist, 203 Eggert Road, PO Box 248, Buffalo, NY 14225–0248.	069041–CAN–001, Ozone by Nicholas Inc., 276 Wildcat Road, Downsview, Ontario M3J 2N5 Canada.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Standard Finis Oil Co., c/o Sharmyn Weljee, 1904 N I–35, Gainsville, TX 76240.	069462–PAK–001, Standard Finis Oil Co., D/33 Site Avenue D, Karachi, Pakistan.

Authority: 7 U.S.C. 136.

Dated: January 11, 2002.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–1616 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–8]

Flexible State Enforcement Responses to Small Community Violations, EPA Policy and Guidance

AGENCY: Environmental Protection Agency.

ACTION: Policy statement and request for public comment on possible revisions.

SUMMARY: The Environmental Protection Agency (EPA) is evaluating the effectiveness of its 1995 *Policy on Flexible State Enforcement Responses to Small Community Violations* (the Small Communities Policy) and seeks public comment on possible revisions to make the policy more useful and to promote more widespread implementation of the policy among states. Possible revisions include an upward adjustment of the population limit for eligible communities, allowing application to "fence line" projects, and provision of additional incentives for participation. This notice also discusses other potential minor changes. EPA will also consider additional changes that may be suggested by commenters. EPA developed the Small Communities Policy to enhance protection of public health and the environment by encouraging states to help small communities: Identify their environmental problems; develop a priority-based schedule for returning to full, comprehensive environmental compliance; and build the technical, administrative, and financial capacity they need to achieve and sustain environmental compliance. The Small Communities Policy can be downloaded from the Internet at *http://es.epa.gov/oeca/scpolicy.html.*

DATES: EPA requests that interested parties comment on this notice in writing. Comments must be received by April 23, 2002.

ADDRESSES: Send written comments to: the Docket Clerk, Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–P–2001–003, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 501–1011. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC–P–2001–003 on your document. In person, deliver comments to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119. Hours of operation are 8 a.m. through 4 p.m., e.s.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, telephone (202) 564–7049; e-mail harmon.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Explanation of Notice

A. Executive Summary

During 1994, EPA began informal discussions with the states of Oregon and Idaho, (later joined by the state of Nebraska) that centered on those states' planned use of enforcement discretion with respect to small community violators. EPA's enforcement guidelines generally mandate initiation of an enforcement action and assessment of a standard penalty amount (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. As these states noted, small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental requirements. Once informed of an environmental violation, a small community may not know how to correct the problem. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental compliance. Oregon, Idaho, and Nebraska sought assurances EPA would defer to a state's exercise of enforcement discretion to reduce or waive the standard penalty where a state determines that a small community violator is working in diligent good faith to correct its violations.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* ("the Small Communities Policy"). The Small Communities Policy established the parameters within which EPA encourages states [1] to provide incentives for small communities to seek state assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building technical, administrative, and financial capacity to achieve and maintain compliance.

The major findings of EPA's preliminary evaluation of the Small Communities Policy and its implementation are as follows:

- During the past six years, few states have elected to establish programs to provide comprehensive environmental compliance assistance to small communities. At present, only the states of Oregon and Nebraska maintain active programs of this type. In these states, the Small Communities Policy has proved effective for reassuring communities that compliance evaluations performed by the state do not always subject the community to an enforcement action and a requirement that they pay penalties.
- The Oregon and Nebraska programs have provided compliance assistance to more than 250 small communities.
- Many states have not established programs to provide comprehensive compliance assistance to small

[1] The term "state" includes territories of the United States and Indian reservations where EPA has approved the Tribe for treatment as a State.

communities because they believe the Small Communities Policy's population cap of 2,500 is too low. These states say their communities with 2,500 or fewer residents offer only limited and rudimentary public services, lack the administrative capacity to implement a comprehensive compliance effort, and their compliance needs can be adequately met by informal compliance assistance focused on the requirements of individual regulatory programs.

- Many small communities see no benefit to be gained by participating in a state's comprehensive compliance assistance program, as reduction or waiver of the noncompliance penalty is little incentive to a community that, because of its limited financial resources, would not pay a significant penalty in a traditional enforcement action.

In response to these findings and others, EPA is considering a number of revisions to the Small Communities Policy. One possible revision would be to raise the population cap, allowing states to direct comprehensive compliance assistance toward larger (but still small) communities that do offer a variety of public services and do have the capacity to undertake and implement a plan for sustained compliance. The Small Communities Policy could also be revised to permit a comprehensive approach to environmental compliance within the "fence line" of one of a community's operations, rather than requiring comprehensive evaluation of all of a community's operations. EPA has also worked to reduce the resource burdens associated with establishing and participating in comprehensive environmental compliance assistance programs and is considering a number of incentives it can offer to both states and small communities. These options and others are discussed later in this Notice.

B. Overview of the Small Communities Policy

EPA's 1995 Small Communities Policy gives states considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. In general, application of the Small Communities Policy is restricted to communities with a population no larger than 2,500 that are working in diligent good faith to achieve and sustain comprehensive environmental compliance. The Small Communities Policy requires that states offering comprehensive environmental compliance assistance have adequate processes for:

- Responding quickly to requests for compliance assistance;
- Selecting communities to participate in the state's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing violations; and
- Ensuring prompt correction of violations.

Where a state implements the Small Communities Policy, EPA reserves all of its enforcement authorities, but will generally defer to a state's exercise of its enforcement discretion in accordance with the terms of the Small Communities Policy. EPA, however, reserves its enforcement discretion with respect to any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health or the environment.

The Small Communities Policy does not apply if, in EPA's judgment, a state's program to offer comprehensive environmental compliance assistance to small communities fails to satisfy the conditions of the Small Communities Policy. The Small Communities Policy does not apply if, in EPA's judgment, a state's application of its small community environmental compliance assistance program fails in a specific case adequately to protect human health and the environment because it neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

C. Relationship of Small Community Policy to Environmental Management Systems

In many respects, the Small Communities Policy promotes an environmental management system (EMS) approach by encouraging small communities to identify their environmental responsibilities and implement management systems that will enable them to sustain compliance. While the Small Communities Policy asks participating small communities to perform a comprehensive assessment of their environmental compliance, the resulting enforceable compliance schedule need only address the violations discovered. A small community that adopts an EMS signals its ongoing commitment to management practices that minimize the likelihood of violations in the future. For this reason, EPA supports states that promote the use of environmental management systems as a component of their programs that offer comprehensive environmental compliance assistance to small communities. Small communities will be able to use the resources of the PEER Center (*see* below) to assist them in developing an EMS. If a small community develops and implements an EMS as part of its strategy to address its noncompliance, the EMS should be incorporated into the written and enforceable compliance schedule.

D. Differences Among the Self-Disclosure Policies

In addition to the Small Communities Policy, the application of which is expressly limited to small communities, EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy)* and the Small Business Compliance Policy (the Small Business Policy), both of which were last revised in April of 2000. These policies provide penalty relief to violators who promptly disclose their violations to EPA and promptly return to compliance. Although the Small Communities Policy is often grouped with the Audit Policy and the Small Business Policy under the shared term "self-disclosure policies," it is different in significant ways. The Audit Policy and the Small Business Policy apply only to violations voluntarily discovered by the regulated entity, *i.e.*, the violator, not a regulator, discovered the noncompliance, and the violations were not discovered during the performance of a compliance assessment required by statute or regulation. The Small Communities Policy, by contrast, allows inclusion both of violations discovered by the regulator and of violations found during legally required compliance assessments. While the Audit Policy and the Small Business Policy do not provide penalty relief for repeat violations, the Small Communities Policy allows application of the policy to communities with a history of noncompliance if the state determines that the community is acting in good faith. The Audit Policy and the Small Business Policy generally allow disclosing violators 60 days and 90 days, respectively, to correct their violations (the Small Business Policy allows 180 days for corrections if the violator first submits a written schedule, and up to 360 days for corrections if the violator will correct the violations by putting into place pollution prevention measures.) The Small Communities Policy gives communities 180 days to correct violations without a schedule, but, if compliance cannot be achieved within that time, allows communities to enter into a written and enforceable

schedule that will address all of their violations in order of risk-based priority as expeditiously as practicable. Both the Audit Policy and the Small Business Policy focus on the noncompliance disclosed by the violator, and the disclosed violations must be corrected in a timely fashion, but the violator is not asked to conduct voluntary evaluations of its compliance with any other regulatory requirements. For this reason, the most significant difference between the Small Communities Policy and the other self-disclosure policies is the Small Communities Policy's emphasis on performing a compliance evaluation of all of a community's environmental operations and on developing the community's capacity to achieve and sustain comprehensive compliance.

II. Possible Revisions to the Small Communities Policy

EPA has identified three areas of the Small Communities Policy that may have the largest influence on whether or not states and small communities participate in programs that provide comprehensive environmental compliance assistance to small communities: (1) The policy's cap on the population of participating communities; (2) the resource burden on states to establish and implement such a program; and (3) the incentives for participation. These three areas of specific concern will be discussed more fully below. EPA seeks comments from the public on how best to address these specific concerns, on other aspects of the policy identified in the discussion to follow, and on any other issues concerning the Small Communities Policy and its implementation.

A. Possible Revisions To Address Areas of Specific Concern

1. The Population Cap

All stakeholders agree that the Small Communities Policy is valuable for the assurances it provides small communities that a good faith request for help can result in compliance assistance instead of an enforcement action and penalty. Some stakeholders have told EPA that the Small Communities Policy appropriately limits participation to communities with a population of 2,500 or less, as a population cap is necessary to limit delivery of comprehensive environmental compliance assistance to those communities that most need help. Other stakeholders believe the Small Communities Policy is of little use to communities with 2,500 or fewer residents. In rural areas, small community residents may obtain their drinking water from their own wells, capture waste water in their own septic systems, or assume responsibility for disposing of their own solid waste. In more densely populated areas, the residents of small communities may receive public services from the surrounding county or district government rather than from their local small government authority. If a community does not provide a range of public services, it has no need for a program that helps it set priorities and develop a schedule for working toward comprehensive environmental compliance. These stakeholders assert that there are numerous larger (but still small) communities that would enjoy greater benefit from participation in such a program, while advancing the Agency's goal of encouraging small communities to achieve and sustain comprehensive environmental compliance.

If the Agency were to revise the Small Communities Policy to address the population cap that some see as an impediment to implementation, EPA would have several options.

a. Raise the Population Cap

The Small Communities Policy capped a small community's population at 2,500 to be consistent with the Small Town Environmental Planning Act, 42 U.S.C. 6908(f) (October 6, 1992), where Congress defined a "small town" as one "with a population of less than 2,500 individuals." If EPA determines that the Small Communities Policy's population cap of 2,500 bars participation of small communities that could benefit from the policy and advance EPA's goals, one possible solution would be to raise the population cap.

Section 9 of the United States Census Bureau's Statistical Abstract of the United States: 2000 indicates that approximately 25,750 of America's 36,000 municipalities, towns, and townships have fewer than 2,500 residents. This 72 percent of America's units of local government is home to only 9 percent of the Americans who live in municipalities, towns, and townships. Doubling the size of the resident population to 5,000 adds another 4,000 units of local government and another 6 percent of the Americans who live within units of local government. Another 2,700 units of local government have populations between 5, 000 and 10,000, and are home to an additional 9 percent of the Americans who live within units of local government. All told, the 32,400 units of local government that have fewer than 10,000 residents represent approximately 90 percent of all units of local government in America, and the 51,400,000 people who live in them represent less than a quarter of all Americans who live in municipalities, towns, or townships.

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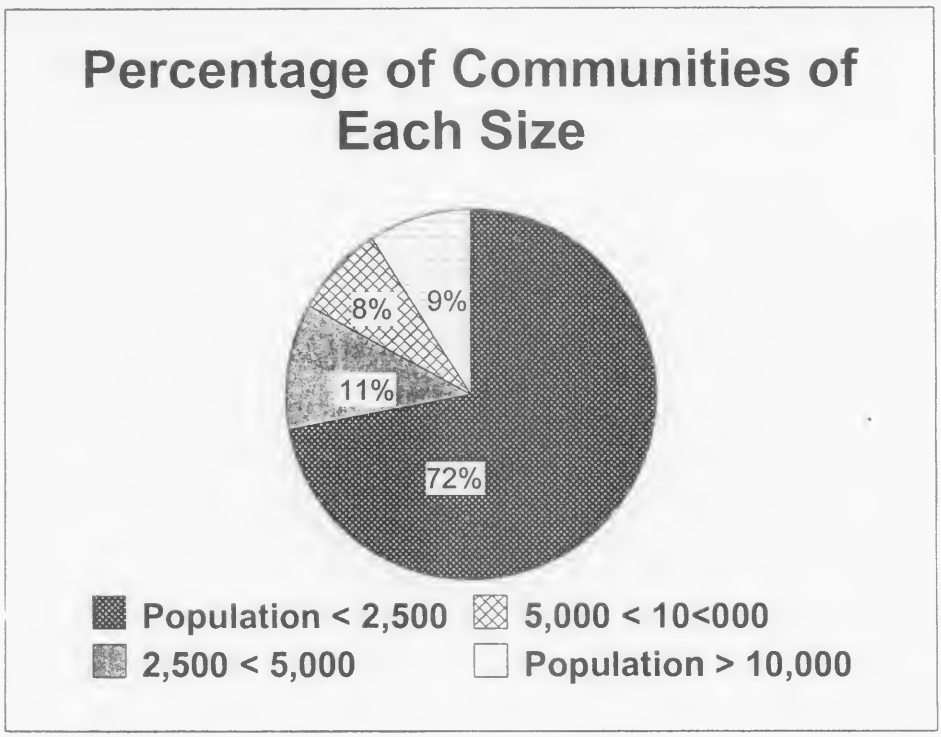

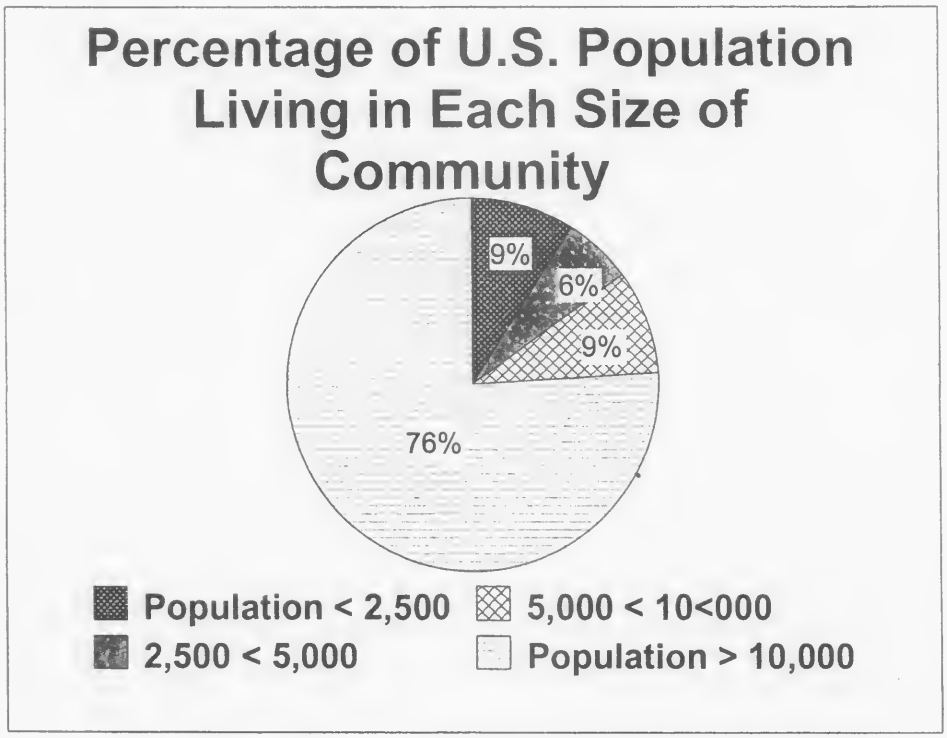

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Congress has defined small town differently in various public laws. In the Small Business Regulatory Enforcement Fairness Act of 1996, and the Small Business Act "small governmental jurisdiction" means the governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Both of these statutes allow a federal agency to establish, after opportunity for public comment, one or more definitions of small governmental jurisdiction "which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction."

Where EPA rules take size into account, most often it is to assign facilities to categories on the basis of the amount of pollution the facility can potentially release into the environment. In regulations controlling municipal storm water discharge facilities and in the primary drinking water standards, EPA has established a regulatory framework that provides different requirements for communities with different resident populations.

In these examples, the size of the resident population is directly proportional to the amount of pollution potentially released into the environment by municipal storm water discharge facilities, to the number of people whose health is potentially placed at risk by drinking water that does not meet standards, and to the number of ratepayers who pay the costs of compliance. For rules related to storm water discharge, EPA defines small local governments as those serving a population of fewer than 100,000. EPA's primary drinking water standards establish a number of different population caps beneath which communities would be considered small enough that they need not meet the more stringent requirements the regulation imposes on larger communities. Primary drinking water standards that establish a small community population cap most often set the cap at either 3,300 or 10,000 residents. In proposing the Arsenic Rule, EPA created provisions intended to lessen the burden on small public water systems that serve fewer than 10,000 persons, citing the population level specified by Congress in section 1412(b)(4)(ii) of the Safe Drinking Water Act for applicability of small system flexibility provisions. EPA requests comment on whether application of the Small Communities Policy should continue to be limited to communities with a population of less than 2,500, whether the Small Communities Policy should adopt the population cap of another EPA statute or regulation, or whether it would be appropriate to establish a population cap at some level not found in EPA statutes or regulations.

b. Replace the Population Cap With a Capacity Test

Noting that the primary goal of the Small Communities Policy is to build a community's capacity to achieve and sustain comprehensive environmental compliance, some stakeholders suggest that the number of people who live in a community may not be the most reliable measure of whether the community lacks or possesses that capacity. They note that some violating communities with fewer than 2,500 residents may have the financial capacity to achieve and sustain comprehensive environmental compliance once their environmental needs are identified. They also note larger, poorer communities may be unable to achieve that result without extensive assistance. For this reason, these stakeholders recommend that EPA's Small Communities Policy determine a community's eligibility to participate in a compliance assistance program not on the basis of a community's population, but solely on a finding that the community lacks the capacity to comply without assistance.

Although the Small Communities Policy already offers a list of indicators states can use to measure a community's capacity to comply, revisions to the policy could require that a community's capacity be determined either on the basis of one or two indicators, on the basis of a detailed demographic analysis, or something in between. Possible capacity indicators for a quick determination would likely focus on whether or not the community employs either a professional government manager or a certified professional whose primary responsibility is environmental compliance. If the Small Communities Policy were to adopt capacity indicators of this type, EPA would take care not to create incentives for communities to avoid employing trained staff as a way to receive preferential treatment from their state.

Some stakeholders have pointed out that a capacity analysis is implicit in the Small Communities Policy's requirement that states assess the good faith of communities that are candidates for their compliance assistance programs. The good faith requirement indicates that a community that has the capacity to comply with environmental requirements, but chose not to exercise that capacity, would not be eligible for participation because it has not acted in good faith. Accordingly, some would view elimination of the Small Communities Policy's population cap in favor of a capacity analysis as removing an arbitrary barrier to delivery of the Small Communities Policy's benefits to needy communities larger than 2,500, not as requiring states to perform additional analysis of candidate communities. Because almost all communities with populations greater than 10,000 are professionally managed and do employ certified environmental professionals, these stakeholders say, elimination of the population cap would not result in application of the Small Communities Policy to large communities, as communities with professional staff should be able to identify and address environmental compliance issues without a state's assistance. Other stakeholders have suggested that small communities with professional staff are *better* able to take advantage of the provisions of the Small Communities Policy, and that employment of professional staff should not bar a small community's participation in comprehensive environmental compliance assistance programs if other capacity measures indicate that the community is unlikely to achieve and sustain comprehensive compliance without assistance from the state. EPA requests comment as to whether the Small Communities Policy should establish a measurement of a small community's compliance capacity as the exclusive criterion for the community's participation in a comprehensive environmental compliance assistance program.

2. The Resource Burden on States

States note that bringing together staff with expertise in various environmental programs, coordinating their efforts, and making them available to provide compliance assistance at the request of small communities can require the investment of significant state resources. EPA hopes to fund a few pilot projects that will help states establish and implement a small community comprehensive environmental compliance assistance program, but Agency resources for such efforts will be limited and subject to annual budget uncertainties.

a. Provide "In Kind" Assistance

EPA anticipates that providing in-kind assistance that lowers a state's implementation costs will prove a reliable and effective method of addressing the states' lack of resources. Many of the tools a state needs to establish a comprehensive

environmental compliance assistance program have already been developed by EPA and are available from EPA and from other sources. Examples include:

- The Profile of Local Government Operations (EPA 310–R–99–001), which details the environmental requirements triggered by typical local governmental activities. Sections of this 300-page book focus on different government operations (*i.e.*, vehicle/equipment maintenance, construction/property management, *etc.*), and describe the environmental requirements associated with the performance of that operation.
- The Local Government Environmental Assistance Network (LGEAN). EPA and nine non-governmental organizations maintain an Internet site (*www.lgean.org*) that provides information about the environmental responsibilities of local governments; alerts users to new and developing issues related to environmental compliance; allows users to review and comment on statutes, regulations and guidance in development; answers their questions, provides a forum for peer counseling, and offers links to grants information and to technical consultants. LGEAN's information services are also available via a toll free telephone number for those who do not have access to the Internet.
- The Environmental Audit Protocols. To date, EPA has published eleven handbooks that provide detailed information on how to audit for compliance with various environmental statutes. Links to the full text of these protocols can be found at *http://es.epa.gov/oeca/main/strategy/crossp.html*.
- The Environmental Management, Auditing, and Pollution Prevention Tool (EMAPPT). Currently under development, this web-based tool will allow users to customize activity-specific compliance assistance tools that identify the applicable regulatory requirements, audit protocol checklists, environmental management system materials, and opportunities for pollution prevention.
- The Compliance Assistance Clearinghouse *http://cfpub1.epa.gov/clearinghouse/*). This guide to compliance information on the Internet provides users quick access to compliance tools, contacts, and activities available from EPA and other compliance assistance providers.
- The Public Entity EMS Resource (PEER) Center. This Web site is scheduled to go on-line in the spring of 2002, with four Local Resource Centers to open across the nation shortly thereafter. The PEER Center will provide a cost-effective central information source where local governments can find quality-assured, field-tested data, information, tools, resources, technical assistance, and training they need to establish an environmental management system for a variety of public facilities in a variety of circumstances.

In addition to these compliance assistance tools, EPA could develop and distribute model documents and process templates that would further reduce program development costs for states. EPA welcomes comments on the utility of these compliance assistance tools and whether additional materials would be helpful.

b. Allow a "Fence Line" Approach

Because performing a comprehensive evaluation of the environmental compliance status of all of a small community's operations can necessitate input from several individuals and involve extensive analysis, allowing participation of small communities on the basis of "fence line" evaluations could be another means of reducing a state's resource demands. The fence line approach erects a figurative fence around one of the local government's facilities or operations (*i,e.*, a waste water treatment plant, vehicle fleet operations, *etc.*) that is the subject of compliance concern. A state can focus personnel and expertise on the environmental regulation that primarily controls activity within the fence line, and make use of information sources like those described in the preceding section to identify additional environmental requirements that the local government must meet within the fence line. Because the fence line approach has seen widespread use by local government's developing environment management systems, the PEER Center will make available case studies showing how several different types of local government facilities established a process to identify their environmental responsibilities. The PEER Center will also make available field tested templates for environmental management systems local government facilities put in place to ensure sustained environmental compliance. By focusing on a limited subset of the small community's facilities or operations, a state can reduce the amount of resources needed to help a community develop a plan and schedule to address environmental concerns identified during a compliance assessment. The small community, however, remains at risk of future discovery of environmental violations at its other facilities.

c. Shift Costs to the Small Community

While EPA will continue working to reduce a state's resource burdens associated with offering comprehensive environmental compliance assistance to small communities, a state can elect to reduce its resource burden by requiring local governments to demonstrate that they qualify for participation in the state's program, or by placing limits on the violations that are eligible for treatment under the Small Communities Policy. The policy permits states to select small communities for participation in their compliance assistance programs at any point in the compliance determination process. A state small community compliance assistance program that sends staff consultants to each community to evaluate its compliance status and identify its violations will require more operating resources than a program that limits participation to those communities that complete a compliance self-evaluation, find violations of more than one environmental law, and reveal those violations to the state in an application for participation. EPA acknowledges that many small communities currently lack the regulatory knowledge and technical expertise required to perform a comprehensive compliance self-evaluation. States, however, can direct interested small communities to the EPA compliance assistance tools described above, as small communities, in many instances, were EPA's intended audience. These tools will help small communities understand their environmental responsibilities and measure their compliance status. Revisions to the Small Communities Policy could either directly append these materials or indicate where they are available from EPA or on the Internet.

States also can reduce their resource demands by awarding grants to small communities from an amount EPA has set aside from the Safe Drinking Water Act State Revolving Fund. Section 1452(q) of the Safe Drinking Water Act authorizes EPA to fund small system technical assistance grants for communities with populations of up to 10,000. States can award grants that communities are required to use to pay for a preliminary engineering evaluation of environmental compliance concerns at their drinking water facilities. While these funds are available only for activities related to compliance with the primary drinking water standards, they can be used as a source of partial funding for a more comprehensive

evaluation of a small community's environmental compliance.

d. Tiering and Streamlining

There are a number of other possible alternatives for states seeking to limit the costs of offering comprehensive environmental compliance assistance to small communities. States could assign communities to tiers on the basis of population, capacity, or some other measure and offer different levels of service to communities in different tiers. For example, the smallest communities could receive comprehensive, hands-on compliance assistance, while larger (but still small) communities would be given an information package that guides them through the process of identifying their violations, developing a compliance strategy, and applying for state approval of their compliance plan.

EPA may also investigate opportunities to coordinate with other federal agencies whose regulations impose requirements on local governments with the goal of increasing efficiency through better coordination among agencies. Streamlining the process of implementing federal regulations could reduce a state's resource burden. EPA seeks comment on these possible revisions intended to reduce a state's resource burden associated with offering comprehensive environmental compliance assistance to small communities, as well as comment on the possibility that state resources devoted to compliance assistance will be offset by cost savings resulting from better coordination among state offices, fewer violations in small communities, the release of less pollution to the environment, improved public health protection, and reduced demands on inspection and enforcement personnel.

3. The Incentives To Participate

For the Small Communities Policy to be effective in helping EPA meet its goal of comprehensive and sustained environmental compliance by small communities, states must have an incentive to offer comprehensive environmental compliance assistance to small communities, and small communities must have an incentive to participate in a state's program.

a. Incentives for States

States with active programs for providing comprehensive environmental compliance assistance to small communities will receive intrinsic benefits.

These states will have more confidence in their assessments of the environmental compliance status of their small communities, they will make measurable progress toward reducing risks to the health of their citizens and to the environment, and will be gathering information that will allow them to make accurate plans and develop realistic budgets for future environmental compliance. States whose comprehensive environmental compliance assistance programs operate within the parameters of the Small Communities Policy enjoy a much greater level of flexibility than they are afforded under EPA's enforcement policies; as they are authorized to exercise their own judgment regarding the most appropriate response to discovered violations. An effective program will also result in sustained compliance on the part of the participating communities that will produce lasting environmental benefits and eventually allow the state to refocus enforcement and compliance resources on other regulated entities.

Additionally, EPA is exploring ways it can award recognition to states that establish and implement programs that provide comprehensive environmental compliance assistance to small communities. For example, special recognition can be awarded to the first state to establish such a program in each EPA Region. The Agency can offer a limited number of grants to states to establish comprehensive small community environmental compliance assistance programs, may offer states opportunities to participate in EPA-funded pilot projects, and give implementing states priority access to new EPA services that support the delivery of compliance assistance. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

b. Incentives for Small Communities

To encourage small communities to participate in comprehensive environmental compliance assistance programs, the Small Communities Policy says EPA will generally defer to a state's decision to waive part or all of the enforcement penalty normally assessed in response to discovered violations. Because EPA guidances allow penalties to be adjusted on the basis of a violator's ability to pay, small communities are rarely ordered to pay large penalties in settlement of enforcement actions. Evidence that penalty mitigation or waiver has not been an effective incentive for small communities can be found in states such as Washington and Alaska. These states established programs to offer comprehensive environmental compliance assistance to small communities, but then found it difficult to recruit communities to participate.

The significant benefits these programs provide to small communities can serve as the incentive to participate if EPA does a better job of publicizing those benefits. Small communities may be more interested in participating in comprehensive environmental compliance assistance programs if they know such programs will identify and address all of their environmental concerns, and that they will emerge from the process both with a plan for sustained environmental compliance and the technical, administrative, and financial capacity to follow through on the plan. Communities that participate in such programs will know they have done what they should do to protect their residents, and they will be able to budget for the future with confidence that they will not be surprised by overlooked environmental requirements that necessitate expensive remediation.

EPA seeks comment on additional incentives the Agency and states can offer small communities to participate in comprehensive environmental compliance assistance programs. Some states currently provide communities a small grant to fund a comprehensive or a program-specific engineering analysis to assess the communities' environmental compliance status. Another option may be to give participating communities priority access to available capital funding in the form of grants or low interest loans, or to provide them greater access to free or low-cost operator training. States may also provide participating communities opportunities to consolidate operations or operators with other nearby communities. EPA may be able to offer participating communities priority access to new or premium compliance assistance services supported by EPA. Possibilities include web-cast information sessions on LGEAN, or environmental management systems counseling through one of the PEER Center's Local Resource Centers. Communities that have completed the process or achieved measurable results could be offered prizes or recognition. Special recognition could be offered to the first few communities to complete the process in an EPA Region, each state, and within additional political subdivisions as appropriate. EPA is also investigating the possibility that certification of compliance with comprehensive environmental assessment standards can result in improved bond ratings and reduced liability insurance premiums. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

E. Possible Revisions to Other Identified Aspects of the Small Communities Policy

If commenters believe that a policy with less flexibility would provide clearer guidance, EPA will considerrevising the Small Communities Policy to provide states with more specific directions, or to append illustrative models and templates. For example, the Small Communities Policy could:

- Establish a definite time limit within which a state must respond to a small community's request for compliance assistance if the Small Communities Policy is to apply;
- Narrow the definition of community;
- Narrow the range of community activities to which the Small Communities Policy applies;
- Further limit the types of violations a small community comprehensive environmental compliance assistance program can address;
- Specify when and how violations must be discovered if they are to be eligible for inclusion in a comprehensive compliance schedule and agreement;
- Draw distinctions between major and minor violations, between violations of different statutes or regulations with respect to appropriate intervals for disclosing and correcting violations;
- Begin tracking the time elapsed for a small community's compliance activities from the date it requests assistance from the state, the date the state identifies violations in the community, or some other date;
- Shorten or lengthen the 180 day interval for a small community either to return to compliance or to enter into a written and enforceable schedule for returning to compliance;
- Establish a defined interval for achieving compliance that a small community must not exceed;
- Incorporate attainment of necessary funding into compliance deadlines
- Provide specific guidance on how small communities are to prioritize their compliance activities; and
- Provide a structure for how states and EPA will interact and how information will be reported to EPA when a state implements a small community environmental compliance assistance program.

EPA welcomes public comment on these aspects of the Small Communities Policy.

F. Possible Revisions Related to Small Communities on Indian Lands

The Small Communities Policy makes no distinction between states and Tribes that have received EPA approval for treatment as states. Implicit, but not stated in the policy, is the fact that EPA directly implements regulatory programs on Indian reservations where the Tribe has not be approved for treatment as a state. In such circumstances, EPA is the "state" and can choose to offer comprehensive environmental compliance assistance to small tribal communities. EPA requests comment regarding whether the Small Communities Policy contain should include provisions specific to small communities located on Indian lands or, in the alternative, whether EPA should develop a separate policy for such communities.

G. Other Possible Revisions

EPA acknowledges that this **Federal Register** Notice may not have identified all impediments to effective use of the Small Communities Policy to support wide-spread establishment of state programs to provide comprehensive environmental compliance assistance to small communities. The Agency welcomes all comments and suggestions that will promote this goal.

Dated: January 14, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–1615 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00730B; FRL–6822–1]

Draft Guidance for Pesticide Registrants on New Labeling Statements for Spray and Dust Drift Mitigation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 22, 2001, the Agency announced the availability of, and sought public comment on, the draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products." On November 14, 2001, EPA published a notice extending the due date for comments until January 19, 2002. The Agency has received several requests to extend the public comment period further to allow commenters more time to prepare their responses to the PR Notice. The Agency believes that additional time is appropriate and would be beneficial; therefore, this notice extends the comment due date until March 31, 2002. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration-related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance on drift label statements for pesticide products. The purpose of this new labeling is to provide pesticide registrants and applicators and other individuals responsible for pesticide applications with improved and more consistent product label statements for controlling pesticide drift from spray and dust applications in order to be protective of human health and the environment. The Agency invites comments on any aspect of the draft PR Notice as well as the specific issues addressed under **SUPPLEMENTARY INFORMATION.**

DATES: Comments, identified by the docket control number OPP–00730B, must be received on or before March 31, 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. under **SUPPLEMENTARY INFORMATION** of the August 22, 2001 **Federal Register.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00730B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7099, fax number: (703) 305–6244; and e-mail address: ellenberger.jay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It may be of particular interest, however, to those persons who hold pesticide registrations, apply pesticides, or regulate the use of pesticides for states, territories, or tribes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the information in this notice, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document?

1. *Electronically.* You may obtain electronic copies of this document and the draft PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from 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" or go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A copy of the draft PR Notice is also available at http://www.epa.gov/opppmsd1/PR—Notices/prdraft-spraydrift801.htm.

2. *Fax-on-demand.* You may request a faxed copy of the draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products" by using a faxphone to call (202) 401–0527 and selecting item 6142. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00730B. 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.

II. Background

In the **Federal Register** of August 22, 2001 (66 FR 44141) (FRL–6792–4), EPA announced the availability of a draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products." The Agency provided a 90–day comment period, which was scheduled to end November 20, 2001. Subsequently, in the **Federal Register** of November 14, 2001 (66 FR 57098) (FRL–6811–3), EPA extended the comment period to January 19, 2002. In response to public comments, the Agency is extending the comment period for the draft PR Notice until March 31, 2002.

List of Subjects

Environmental protection, pesticides.

Dated: January 17, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–1758 Filed 1–18–02; 1:52 pm]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on January 30, 2002 in Washington, DC.

DATES: The meeting will be held on January 30, 2002, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Emergency Management Agency FEMA's Lobby Conference Center, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–3508; or e-mail *pat.tenorio@fema.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) reports from FRPCC subcommittees, (3) old and new business, and (4) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public not more than five minutes in length. Any member of the public who wishes to make an oral statement at the January 30, 2002, FRPCC meeting should request time in writing from Russell Salter, FRPCC Chair, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: January 15, 2002.

Russell Salter,

Director, Technological Hazards Division, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 02–1550 Filed 1–22–02; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974: Proposed New Routine Use, Expansion of an Existing Use and Revision of an Existing System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed new routine uses, revision of an existing system of records and addition of new systems of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, we, the Federal Insurance and Mitigation Administration (FIMA) of FEMA, give notice of proposed new routine uses, and revision of an existing system of records entitled FEMA/FIA 2, National Flood Insurance Program Application and Related Documents Files and addition of new systems of records.

DATES: The proposed routine uses, revision of existing system of record and addition of new systems of records will become effective on January 23, 2002, without further notice unless comments necessitate otherwise.

We invite your comments on these routine uses and revisions on or before February 22, 2002.

ADDRESSES: Please address comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472; (telefax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen Leshan, FOIA/Privacy Act Specialist, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472,

(202) 646–4115, (telefax) (202) 646–4536, or email *Eileen.Leshan@fema.gov*.

SUPPLEMENTARY INFORMATION: We last published our notice of system of records on September 11, 2001, 66 FR 47228; January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); March 5, 1987 (52 FR 6875); September 7, 1990 (55 FR 37182); and June 7, 1991 (56 FR 26415). We previously published the system identified as FEMA/FIA–2, National Flood Insurance Application and Related Files on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376; February 17,1984, 49 FR 6168; May 13,1985, 50 FR 20007; January 5,1987, 52 FR 324; July 28,1988, 53 FR 28437; August 9, 1988, 53 FR 29947.

Proposed New Routine Use

We have created the Repetitive Loss Target Group (RLTG) as part of an initiative to reduce claims under the National Flood Insurance Program (NFIP) with respect to properties that have sustained multiple losses. Generally, we have defined repetitive loss properties as those that have had at least two losses of $1,000 or more within any 10-year period. The RLTG is a subset of these properties that include currently insured properties that have either:

(1) Two or more losses that in the aggregate, equal or exceed the current value of the insured property; or

(2) Four or more losses.

Approximately 11,000 properties are included in the RLTG.

Inclusion of a property in the RLTG results in the transfer of the flood insurance policy to a central facility (Special Direct Facility (SDF)) designed to oversee claims and to coordinate and facilitate mitigation, which will require a new Routine Use to allow transfer of the NFIP Bureau and Statistical Agent RLTG, records to the NFIP's SDF, which has been created for oversight of RLTG activities. Accordingly, a new Routine Use is proposed to permit transfer of RLTG records from the NFIP Bureau and Statistical Agent to the NFIP Special Direct Facility.

Proposed New Routine Use

We have created the Preferred Risk Policy (PRP) for policyholders (1–4 Family) with limited loss experience only located in B, C, and X Zones. Eligible policyholders receive a discount off the standard flood insurance rate. To be eligible to receive this benefit, however, there are certain conditions based upon the building's loss history, regardless of ownership that the owner must meet.

If any of the following conditions, arising from one or more occurrences, exist then the dwelling is *not* eligible:

(1) 2 loss payments, each more than $1,000;

(2) 3 or more loss payments, regardless of amount;

(3) 2 Federal Disaster Relief payments, each more than $1,000;

(4) 3 Federal Disaster Relief payments, regardless of amount; or

(5) 1 flood insurance claim payment and 1 flood disaster relief payment (including loans and grants), each more than $1,000.

If a policyholder applies for a PRP, and is denied, he needs NFIP records regarding the property's loss history before his or her ownership to determine whether the NFIP's determination was correct. Currently, these records are protected from disclosure. Accordingly, we propose a new Routine Use to permit release of a property's prior loss history to a policyholder whose PRP application we have denied.

Proposed New Routine Use

In many instances FEMA must work closely with federal agencies, state and local governments in order to achieve the objectives of the NFIP. In this connection, FEMA will need to transfer NFIP records to federal agencies and state and local governments for the purpose of analysis, research and feasibility studies. Accordingly, we propose a new Routine Use to permit release of NFIP records to federal agencies and state and local governments for research, analysis and feasibility studies.

Revision of an Existing System of Records

We are also revising our existing routine use system, FIMA/FEMA–2 to reflect changes mandated by the passage of time.

New System of Records

We are adding new systems of records to reflect the growth and expansion of the NFIP.

Dated: January 10, 2002.

Michael D. Brown,

General Counsel.

The proposed new routine uses, and the new and revised systems of records follow:

FEMA–FIMA–2

SYSTEM NAME:

National Flood Insurance Direct Servicing Agent Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472. We also provide copies of some files to the FEMA Regional offices when they request additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form	Title of form
FEMA Form 81–64	Applications for Participation in the National Flood Insurance Program.
FEMA Form 81–16	Flood Insurance Application.
FEMA Form 81–18	Flood Insurance General Change Endorsements.
FEMA Form 81–23	Request for Policy Processing and Renewal Information.
FEMA Form 81–17	Flood Insurance Cancellation/Nullification Request Form.
FEMA Form 81–67	Flood Insurance Preferred Risk Policy Application.
FEMA Form 81–31	National Flood Insurance Program Elevation Certificate.
FEMA Form 81–65	National Flood Insurance Program Floodproofing Certificate.
FEMA Form 81–25	V Zone Risk Factor Rating Form.
FEMA Form 81–40	National Flood Insurance Program Worksheet—Contents.
FEMA Form 81–41	National Flood Insurance Program Worksheet—Building.
FEMA Form 41a	National Flood Insurance Program Worksheet—Building.
FEMA Form 81–42	National Flood Insurance Proof of Loss.
FEMA Form 81–43	National Flood Insurance Program Notice of Loss.

Form	Title of form
FEMA Form 81–44	Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy.
FEMA Form 81–45	Adjuster's Short Form Report.
FEMA Form 81–57	National Flood Insurance Program Preliminary Report.
FEMA Form 81–58	National Flood Insurance Program Final Report.
FEMA Form 81–59	National Flood Insurance Program Narrative Report.
FEMA Form 81–63	National Flood Insurance Program Cause of Loss/Subrogation Report.

This system may contain information regarding the name of the bank/lender, date of mortgage, address of the bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system may also contain the taxpayers' identification number, which may be the social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program and verify nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To insurance agents, brokers, adjusters and lending institutions NFIP policy and claims records for carrying out the purposes of the National Flood Insurance Program and verifying nonduplication of benefits.

To states, Group Flood Insurance Program (GFIP) certificates are provided for carrying out the purposes of the National Flood Insurance Program.

To the Bureau and Statistical Agent, the Direct Servicing Agent provides Transaction Records Reporting and Processing Plan updates regarding policy and claims transactions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1661a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM: STORAGE:

Magnetic Tape/disc/microfilm and paper files.

RETRIEVABILITY:

By name of the policyholder(s) and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas by card key access during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep policy records as long as the owner desires insurance and pays premiums, and for an appropriate time thereafter and we keep claim records for 6 years and 3 months after final action, unless litigation exists. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, a driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–3

SYSTEM NAME:

National Flood Insurance Bureau and Statistical Agent (BSA) Data Elements and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a statistical agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

We also provide copies of some of the files to the FEMA Regional offices when additional information is requested from them.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Data elements regarding individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

The NFIP has entered into an "Arrangement" with participating private insurance companies for the sale of flood insurance policies. Under the terms of the "Arrangement", the private insurance companies have reporting requirements applicable to the writing and servicing of policies issued, advanced in the Transaction Record Reporting and Processing (TRRP) Plan. The data elements required by the TRRP plan essentially form the system of records for FEMA/FIMA's Bureau and Statistical Agent contract. The categories of records in the system follow:

(a) Data elements records for New Business.

(b) Data elements records for Policy Reinstatement Without Policy Changes.
(c) Data elements records for Policy Reinstatement With Policy Change.
(d) Data elements for Renewals.
(e) Data elements for Endorsements.
(f) Data elements for Policy Correction.
(g) Data elements for Cancellation.
(h) Data elements for Cancellation Correction.
(i) Data elements for Open Claim/ Loss-Reserve.
(j) Data elements for Reopen Claim/ Loss.
(k) Data elements for Change Reserve.
(l) Data elements for Partial Payment.
(m) Data elements for Close Claim/ Loss.
(n) Data elements for Close Claim Loss Without Payment.
(o) Data elements for Addition to Final Payment.
(p) Data elements for Recovery After Final Payment.
(q) Data elements for General Claim/ Loss Correction.
(r) Data elements for Claim Payment Correction.
(s) Data elements for Recovery Correction.
(t) Data elements for Special Allocated Loss Adjustment Expense.
(u) Data elements for Special Allocated Loss Adjustment Expense Correction.
(v) Data elements for Change Policy Number Key.
(w) Data elements for Change Date of Loss Key.
(x) Data elements for Change Claims Payment Date Key.
(y) Data elements for Lender Data (Expired Policy Notification).
(z) Adjuster Certification Application.
(aa) NFIP Listing of 1316 Properties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129, 5 U.S.C. 301, Reorganization Plan No.3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O.12127, 3 CFR, 1979 Comp, p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program and verify nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Category of users	Purposes
1. To property loss reporting bureaus, State insurance departments, and insurance companies.	investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA.
2. To insurance adjusters, and lending institutions	for carrying out the purposes of the National Flood Insurance Program.
3. To FEMA's readiness, Recovery and Response Directorate, The Army Corps of Engineers, Small Business Administration, the American Red Cross, the Farm Service Agency for USDA, State and local government individual and family grant and assistance agencies.	for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster.
4. To Write-Your-Own companies as authorized in 44 CFR 62.23.	to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program.
5. To State and local government individual and family grant agencies.	to permit such agencies to assess the degree of financial burdens toward residents such as States and local governments might reasonably expect to assume in the event of a flooding diaster and to further the flood insurance marketing activities of the National Flood Insurance Program.
6. To State and local government agencies that provide the names and address of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties.	for review by the Administrator, Federal Insurance Mitigation Adminstration to ensure that their State or local government agency is engaged in flood plain management, improved real property acquisitions, and relocation projects that are consistent with the National Flood Insurance Program and, upon the approval by the Administrator, Federal Insurance and Mitigation Administration, that the use furthers flood plain management and hazard mitigation goals of the Agency.
7. To the Army Corps of Engineers, state and local government agencies and municipalities.	to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community.
8. To state governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions.	for carrying out the purposes of the National Flood Insurance Program.
9. To private companies engaged in or planning to engage in activities to market or assist lenders and mortgage servicing companies.	NFIP records may be released to aid efforts of lenders and mortgage servicing companies to comply with the requirements of the Flood Disaster Protection Act of 1973 and to market the sale of flood insurance policies under the National Flood Insurance Program.
10. To lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios.	NFIP records may be released to secure flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio to assure lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.
11. To current owners of properties designated under the National Flood Insurance Program as Repetitive Loss Target Group properties.	the dates and dollar amounts of loss payments made to prior owners may be released so that owners may evaluate whether that designation is appropriate and may, if they believe the designation is not appropriate, use the information to appeal that designation.
12. To the Special Direct Facility	NFIP Repetitive Loss records for the processing of Repetitive Loss Target Group policyholder underwriting and claims receords.
13. To Preferred Risk Property (PRP) owners who are contesting the denial of their PRP applications.	the properties' prior loss history.
14. To federal agencies and state and local governments	NFIP records for research, analysis and feasibilities studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may make disclosure from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/microfilm and paper files.

RETRIEVABILITY:

By name of the policyholder(s) and policy number, property address and 9-digit zip code.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that building guards secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep data records for 7 years. Disposition of records will accord with FEMA Manual 5400.1.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals insured under the National Flood Insurance Program (NFIP). Write-Your-Own (WYO) companies that write National Flood Insurance Program policies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–4

SYSTEM NAME:

National Flood Insurance Program Marketing Records and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a serving agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers, flood insurance policyholders, insurance agents, Write-Your-Own companies and lenders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Under FIMA's Marketing program, the NFIP contractor collects records under its marketing vehicle, Cover America II.

Research: Cover America II contains NFIP records of research conducted with consumers, flood insurance policyholders, insurance agents, Write-Your-Own (WYO) companies and lenders, including names, addresses, and telephone numbers.

Direct Mail: Records of consumer and insurance agent names and addresses used for direct mailings.

The categories of records in the system are: market research data regarding the NFIP, including information with respect to awareness, attitudes and satisfaction as it relates to the NFIP, which is obtained through qualitative surveys approved by the Office of Management and Budget (OMB), including the names and addresses of participants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978, Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To plan and implement a marketing campaign to notify the public regarding the availability of flood insurance protection and to alert the public to the risks of flooding, as well as to encourage the public to obtain more information regarding the NFIP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may disclose from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc and paper files.

RETRIEVABILITY:

By names, addresses and telephone numbers of consumers, policyholders, insurance agents, WYO companies, and lenders.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that we secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep records for research for 2 years. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current

address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Consumers, flood insurance policyholders, flood insurance agents and lenders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–5

SYSTEM NAME:

National Flood Insurance Program Telephone Response Center (TRC) Consumer and Policyholder Records and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The office of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers requesting NFIP Marketing material and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

FEMA/FIMA has a contractor administering its Telephone Response Center (TRC), where we maintain records of research conducted with consumers, insurance agents, Write-Your-Own (WYO) companies and individual respondents' names, addresses, and telephone numbers. The TRC contractor also maintains consumer records to review the effectiveness of its operation and for quality control purposes.

The categories of records in the system are: names and addresses of consumers seeking NFIP data, specifically, records regarding consumer research and inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the FEMA Distribution Center, the TRC transfers the names and addresses of consumers for delivery of consumer kits.

To the Bureau and Statistical Agent, the TRC transfers the addresses of callers/consumers who made inquiries to the NFIP to match them against the policyholder file to ascertain the number of callers who purchased a policy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may disclose from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/ and paper files.

RETRIEVABILITY:

By the consumer's name, address and telephone number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that building guards secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep consumer records for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who request information about flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/FIMA–6

SYSTEM NAME:

National Flood Insurance Special Direct Facility (SDF) Repetitive Loss Target Group Records and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The office of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals designated as RLTG policyholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

FEMA/FIMA has selected a contractor to administer and operate the Repetitive Loss Program (RLP), through the Special Direct Facility (SDF). The SDF maintains records of the RLP, consisting of RLP underwriting and claims data that have met the threshold requirements to be designated as

Repetitive Loss Target Group (RLTG) properties. The categories of records in the system follow:

Form	Title of form
FEMA Form 81–64	Applications for Participation in the National Flood Insurance Program.
FEMA Form 81–16	Flood Insurance Application.
FEMA Form 81–18	Flood Insurance General Change Endorsements.
FEMA Form 81–23	Request for Policy Processing and Renewal Information.
FEMA Form 81–17	Flood Insurance Cancellation/Nullification Request Form.
FEMA Form 81–67	Flood Insurance Preferred Risk Policy Application.
FEMA Form 81–31	National Flood Insurance Program Elevation Certificate.
FEMA Form 81–65	National Flood Insurance Program Floodproofing Certificate.
FEMA Form 81–25	V Zone Risk Factor Rating Form.
FEMA Form 81–40	National Flood Insurance Program Worksheet—Contents.
FEMA Form 81–41	National Flood Insurance Program Worksheet—Building.
FEMA Form 41a	National Flood Insurance Program Worksheet—Building.
FEMA Form 81–42	National Flood Insurance Proof of Loss.
FEMA Form 81–43	National Flood Insurance Program Notice of Loss.
FEMA Form 81–44	Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy.
FEMA Form 81–45	Adjuster's Short Form Report.
FEMA Form 81–57	National Flood Insurance Program Preliminary Report.
FEMA Form 81–58	National Flood Insurance Program Final Report.
FEMA Form 81–59	National Flood Insurance Program Narrative Report.
FEMA Form 81–63	National Flood Insurance Program Cause of Loss/Subrogation Report.

This system may contain information regarding the name of the bank/lender, date of mortgage, address of bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system may also contain the taxpayer's identification number, which may be his or her social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To RTLG policyholders who are appealing the determination that their property is a repetitive loss property, NFIP repetitive loss property history prior to their ownership of the property will be provided.

To insurance agents, brokers, adjusters and lending institutions for carrying out the purposes of the National Flood Insurance Program and verifying nonduplication of benefits.

To the Bureau and Statistical Agent, the Special Direct Facility provides TRRP Plan updates regarding RLTG policy and claims transactions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/and paper files.

RETRIEVABILITY:

By the name of the RLTG policyholders and RLTG number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas by key card access during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep policy records as long as the owner desires insurance and pays premiums, and for an appropriate time thereafter and we keep claim records for 6 years and 3 months after final action, unless litigation exists. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification above.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISONS OF THE ACT:

None.

FEMA/FIMA–7

SYSTEM NAME:

National Flood Insurance Community Rating System and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a firm selected to administer the CRS program for the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472. We also provide copies of some of the files to FEMA Regional offices when they request additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Communities that have made CRS applications and Repetitive Loss property owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

FIMA/FEMA has created the Community Rating System (CRS), a program to adjust NFIP insurance premium rates based on the mitigation activities implemented by a community. A firm has been selected to process CRS applications. The categories of records in the system are: community CRS applications and repetitive loss property owners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

To communities, repetitive loss records may be provided to address repetitive loss problems within the communities.

To the Bureau and Statistical Agent, we provide repetitive loss records for communities that have updated their repetitive loss mitigative measures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Magnetic cartridge/disc/and paper files.

RETRIEVABILITY:

By the community's name and number. By the NFIP policyholder name and policy number. By the repetitive loss locator number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep records for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manger identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification above.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: We have identified certain routine uses that apply to many of the FEMA systems of notice records. We will list the specific routine uses applicable to an individual system of record under the "Routine Use" section of the notice itself and they will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

(1) *Routine Use—Law Enforcement:* A record from any FEMA system of records, which indicates either by itself or in combination with other information within FEMA's possession, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, and which we may disclose, as a routine use, to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization, charged with the responsibility of enforcing, implementing, investigating or prosecuting such violation or charged with implementing the statute, rule, regulation or order issued under it.

(2) *Routine Use—Disclosure When Requesting Information:* We may disclose as a routine use a record from a FEMA system of records to a Federal, State or local agency, maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information, relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(2) *Routine Use—Disclosure of Requested Information:* We may disclose as a routine use a record from a FEMA system of records to a Federal agency, in response to a written request in connection with the hiring or retention of an employee, the issuance of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the

requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(3) *Routine Use—Grievance, Complaint, Appeal:* We may disclose as a routine use a record from a FEMA system of records to an authorized appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, mediator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal by an employee. We may disclose a record from this system of records to the Office of Personnel Management as government-wide records; we will consider those records as part of the government-wide system. We may transfer as a routine use other official personnel records covered by notices published by FEMA and considered to be separate systems of records to the Office of Personnel management in accordance with official personnel programs and activities.

(5) *Routine Use—Congressional Inquiries:* We may disclose as a routine use a record from a FEMA system of records to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

(6) *Routine Use—Private Relief Legislation:* We may disclose as a routine use the information contained in a FEMA system of records to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

(7) *Routine Use—Disclosure to the Office of Personnel Management:* We may disclose as a routine use a record from a FEMA system of records to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

(8) *Routine Use—Disclosure to National Archives and Records Administration:* We may disclose as a routine use a record from a FEMA system of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(9) *Routine Use—Grand Jury:* We may disclose as a routine use a record from any system of records to a grand jury agent pursuant to a federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

[FR Doc. 02–1549 Filed 1–22–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, January 28, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Office of Public Affairs at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1771 Filed 1–18–02; 1:18 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New Computer Matching Agreement

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of a New Computer Matching Agreement (CMA).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a CMA between CMS and the State of California Department of Health Services (DHS) titled "Disclosure of Medicare and Medicaid Information."

EFFECTIVE DATES: CMS filed a CMA report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Howard Cohen, Health Insurance Specialist, Program Integrity Group, Office of Financial Affairs, CMS, Room C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–9537.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and, 5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all Computer Matching Programs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

CMA No. 2001–06

NAME:

Computer Matching Agreement between the Centers for Medicare & Medicaid Services and the State of California Department of Health Services entitled Disclosure of Medicare and Medicaid Information.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS), and State of California Department of Health Services (DHS).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This Computer Matching Program (CMP) is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) sec. 552a), as amended, the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" published at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching (54 FR 25818 (June 19, 1989)).

Authority for this matching program is given under the matching provisions of sections 1816, 1842, and 1874(b) of the Social Security Act (42 U.S.C. 1395h, 1395u, and 1395kk(b)).

Authority for DHS to participate in this computer-matching program is given under the provisions of sections 10740, 10748, 10750, 14000, 14000.3. 14000.4, 14005, 14005.4, 14100.1, 14200 of the California Welfare and Institutions Code, and 42 CFR 431.300 through 431.307. DHS is charged with administration of the Medicaid program in California and is the single state agency for such purpose. DHS may act as an agent or representative of the Federal government for any purpose in furtherance of DHS's functions or administration of the Federal funds granted to the state. In California, the Medi-Cal Act provides qualifying individuals with health care and related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law. The program to provide all such services is known as the Medi-Cal program.

PURPOSE (S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the CMS will conduct a computer matching program with DHS to study claims, billing, and eligibility information to detect suspected instances of fraud and abuse (F&A) in the State of California. CMS and DHS will provide a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid/Medi-Cal records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of California expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and DHS to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of California against records of Medicaid/Medi-Cal beneficiaries, practitioners, providers, and suppliers in the State of California.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

A. Systems of Records.

The data for CMS are maintained in the following Systems:

National Claims History (NCH), System No. 09–70–0005, was most recently published at 59 FR 19181 (April 22, 1994). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 55 FR 37547 (September 12, 1990). Matched data will be released to DHS pursuant to the routine use set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 published at 57 FR 23420 (June 3, 1992). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, published at 53 FR 50584 (Dec 16, 1988). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published at 59 FR 37243 (July 21, 1994). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

B. The data for DHS are maintained in the following data files:

"Medi-Cal RFF035 File Paid Claims," "Medi-Cal Combined Provider Master File;" and "Medi-Cal Eligibility File.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 02–1524 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Department of Health and Human Services (HHS), Centers for

Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice to delete 12 systems of records.

SUMMARY: CMS proposes to delete 12 systems of records from its inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The deletions will be effective on January 15, 2002.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3573. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern standard time.

SUPPLEMENTARY INFORMATION: CMS is reorganizing its databases because of the amount of information it collects to administer the Medicare and Medicaid programs. With this reorganization of databases, CMS is deleting the systems of records listed below. Retention and destruction of the data contained in these systems will follow the schedules listed in the system notice. CMS proposes to delete the following systems.

Systems to be Deleted:

System No. 09–70–0504, "Beneficiary Part A and B Uncollectible Overpayment File;"
System No. 09–70–0508, "Reconsideration and Hearing Cases Files (Part A) Hospital Insurance Program;"
System No. 09–70–0512, "Review and Fair Hearing Case Files—Supplementary Medical Insurance Program;"
System No. 09–70–0516, "Medicare Physician Supplier Master File;"
System No. 09–70–0518, "Medicare Clinic Physician Supplier Master File;"
System No. 09–70–0522, "Billing and Collection Master Record System;"
System No. 09–70–1511, "Physical Therapists in Independent Practice (Individuals);"
System No. 09–70–1512, "Peer Review Organizations Data Management Information System;"
System No. 09–70–1516, "Uniform Clinical Data Set;"
System No. 09–70–2003, "Completion of State Medicaid Quality Control Reviews;"
System No. 09–70–2006, "Income and Eligibility Verification for Medicaid Eligibility Quality Control Reviews;"
System No. 09–70–9001, "Health Care Financing Administration Correspondence and Assignment Tracking and Control System;"

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1525 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to modify or alter an SOR, "Health Insurance Master Record (HIMR)," System No. 09–70–0502. CMS is reorganizing its databases because of the amount of information it collects to administer the Medicare program. We are proposing to amend the purpose of the HIMR to include maintaining enrollment data without utilization data and change the name from the HIMR to read the "Enrollment Database (EDB)" to reflect this amended purpose. The only data in the HIMR, which are not in the EDB, are the utilization and bill processing data. Since the EDB will now maintain enrollment-related data, all utilization data for bill payment record processing will now be maintained in the "Common Working File (CWF)," System No. 09–70–0526. With this reorganization of databases, CMS is deleting, in a separate notice, the following SOR: "Medicare Enrollment Records Statistics (MERS)," System No. 09–70–0006, and the "Health Insurance Enrollment Statistics, General Enrollment Period (HIES)," System No. 09–70–0007. These 2 systems are being deleted because their enrollment purpose is being subsumed into the EDB. The EDB does maintain data regarding direct billing for Medicare premiums.

The security classification previously reported as "None" will be modified to reflect that data in this system are considered to be "Level Three Privacy Act Sensitive." We propose to delete published routine uses number 1 authorizing disclosures to the Railroad Retirement Board (RRB), number 2 authorizing disclosures to state welfare departments, number 3 authorizing disclosures to state audit agencies, number 8 authorizing disclosure to contractors, number 9 authorizing disclosures to state welfare agencies, number 12 authorizing disclosures to contractors, number 13 authorizing disclosures to agencies of a state government, number 14 authorizing disclosures to group health plans, number 15 authorizing disclosures to contractors, number 16 authorizing disclosures for Medicare Secondary Payer (MSP) utilization purposes, number 17 authorizing disclosures to the Internal Revenue Service (IRS), and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures allowed by routine uses number 1, 2, 3, 13, 17, and to the SSA will be covered by a new routine use to permit release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." The proposed routine use for contractors and consultants makes material changes to published routine uses number 8, 12, and 15, and as proposed should be treated as a new routine use. The proposed routine use for "other insurers and group health plans" makes material changes to published routine uses number 11, and 14, and as proposed should be treated as a new routine use. Routine use number 9 is being deleted because the information pertaining to Beneficiary State File and Carrier Alphabetical State File, is no longer maintained in the EDB. Routine use number 16 is also being deleted because the information listed in the routine use as being releasable for MSP utilization purposes is not maintained in the EDB.

We are modifying the language in the remaining routine uses to provide clarity to CMS intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take this opportunity to update any sections of this SOR that were affected by the recent reorganization and to modify language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment,

Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) Peer Review Organizations; (6) other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related and epidemiological projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the Agency; and (10) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. We will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this SOR or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m. –3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Bob Donnelly, Director, Health Plan Policy Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Mail Stop C4–25–02, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–0629.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Background

The HIMR, which will be renamed the EDB, was established in 1965 to maintain accurate and complete data on Medicare enrollment, entitlement, and utilization. Notice of the modification to this system, HIMR, was published in the **Federal Register** (FR) at 55 FR 37549, (Dec. 18, 1990); 61 FR 6645 (Feb. 21, 1996) (added unnumbered social security use); 63 FR 38414 (July 16, 1998) (added three fraud and abuse uses); and 65 FR 50552 (Aug. 18, 2000) (deleted one and modified two fraud and abuse uses). MERS, was established to study the characteristics of persons enrolled in the Medicare program and establish the basis for Medicare services utilization rates. MERS is being deleted and the EDB will take over its enrollment purpose. HIES, was established to contact persons eligible for Part B benefits who had refused or withdrawn coverage of these benefits, for purposes of re-enrollment for Part B coverage and to evaluate results of such contacts. This system is also being deleted, and its enrollment purpose is being subsumed by the EDB. Utilization data from both will continue to be maintained in the CWF.

Since these systems were established, the amount of enrollment information CMS collects to administer the Medicare program has vastly increased. To be of maximum use, the data must be organized and categorized into a comprehensive system. This redesign of CMS's databases will result in changes to the collection, aggregation, and analysis of Medicare information. Changes in the way CMS processes its enrollment data are being dramatically affected by the database redesign activity. These changes are necessary to accomplish two major initiatives:

- Enrollment-related data will be processed at the CMS Data Center and not at the SSA National Computer Center;
- Enrollment-related data will be consolidated in one file from various sources.

The EDB is being created to serve as a shared data resource by all CMS information systems. Once the EDB is established, it will be the authoritative source of Medicare enrollment related information. It will identify, in the same manner as the HIMR did, each person currently or previously entitled to Medicare benefits based upon age, disability, or end-stage Renal Disease (ESRD) under Title XVIII of the Act or under provisions of the Railroad Retirement Act, and will also identify whether a person is currently covered or was previously covered for hospital insurance benefits (Part A), medical insurance benefits (Part B), or both.

Given these changes, the purpose statement of the EDB system must be amended to reflect its current function of maintaining enrollment data without utilization data. The amended purpose of the EDB will read as follows: "To maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program."

B. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under sections 226, 226A, 1811, 1818, 1818A, 1831, 1836, 1837, 1838, 1843, 1876, and 1881 of the Social Security Act (the Act) and Title 42 Code of Federal Regulations (CFR), parts 406, 407, 408, 411 and 424.

Authority for maintenance of the system section 1862 of the Act was a published authority in the published SOR. We included section 1862 in the modified SOR since we do maintain a limited number of data elements in the EDB pertaining to MSP.

Authority for maintenance of the system section 1870 of the Act was included in the modified system since the EDB does maintain data regarding direct billing for Medicare premiums. Section 1870 (g) describes refunding these premiums.

II. Collection and Maintenance of Date in the System

A. Scope of the Data Collected

The system contains information related to Medicare enrollment and entitlement and MSP data containing other party liability insurance information necessary for appropriate Medicare claim payment. It contains hospice election, premium billing and collection, direct billing information, and group health plan enrollment data. The system also contains the

individual's health insurance numbers, name, geographic location, race/ethnicity, sex, and date of birth.

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release EDB information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of EDB. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., ensuring proper enrollment, establishing the validity of individual's entitlement to benefits, verifying the accuracy of information presented by the individual, insuring proper reimbursement for services provided, claims payment, and coordination of benefits provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EDB without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require EDB information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

The IRS may require EDB data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C.1395y(b);

In addition, other state agencies in their administration of a Federal health program may require EDB information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state;

The RRB requires EDB information to administer provisions of the Railroad Retirement Act relating to railroad employment and/or the administration of the Medicare program;

SSA requires EDB data to assist in the implementation and maintenance of the Medicare program;

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state;

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require EDB information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require EDB information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require EDB information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To Peer Review Organizations (PROs) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require EDB information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

EDB data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so

would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require EDB information for the purpose of combating fraud and abuse in such Federally funded programs. Additional Circumstances Affecting Routine Use Disclosure

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The EDB system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the EDB system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems

security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of EDB. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0502

SYSTEM NAME:

Enrollment Database (EDB), HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various other remote locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have ESRD; individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information related to Medicare enrollment and entitlement and MSP data containing other party liability insurance information necessary for appropriate Medicare claim payment. It contains hospice election, Group Health Organization Insurance health plan election, premium billing and collection, direct billing information, and group health plan enrollment data. The system also contains the individual's health insurance numbers, name, geographic location, race/ethnicity, sex, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under sections 226, 226A, 1811, 1818, 1818A, 1831, 1836, 1837, 1838, 1843, 1876, and 1881 of the Act and Title 42 Code of Federal Regulations (CFR), parts 406, 407, 408, 411 and 424.

Authority for maintenance of the system section 1862 of the Act was a published authority in the published SOR. We included section 1862 in the modified SOR since we do maintain a limited number of data elements in the EDB pertaining to MSP.

Authority for maintenance of the system section 1870 of the Act was included in the modified system since the EDB does maintain data regarding direct billing for Medicare premiums. Section 1870 (g) describes refunding these premiums.

PURPOSE(S):

The primary purpose of the SOR is to maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individuals capacity to manage his or her own affairs; (5) Peer Review Organizations; (6) other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related and epidemiological projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the Agency; and (10) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EDB without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of

Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators, (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMO) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All Medicare records are accessible by HIC number or alpha (name) search. This system supports both on-line and batch access.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the

exposure of computer equipment and thus achieve an optimum level of protection and security for the EDB system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained for a period of 15 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Health Plan Policy Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the systems manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some MSP situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Railroad Retirement Board, and the Master Beneficiary Record maintained by the SSA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–1526 Filed 1–22–02; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system of records, "Common Working File (CWF)," System No. 09–70–0526. We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Board for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to peer review groups to assist with questions of medical necessity, number 17 authorizing disclosure to physicians and other supplier of services attempting to validate amounts of individual items, number 18 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 19 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 20 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 23 authorizing disclosure to an agency of a state government or established by law, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures permitted under routine uses number 4, 5, 7, 9, 12, 14, 20, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." Disclosures permitted under published routine uses number 1, 2, 3, and 18 will now be covered by proposed routine use number 3, which will allow for release of information to "third party contacts." Disclosure to "other insurers and group health plans" contained in published routine use 21 has been broaden to include similar groups with similar activities. This routine use will be renumbered as proposed routine use number 6. Disclosures permitted under routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. Disclosures permitted under routine use number 10 will be made a part of proposed routine use number 4, which will permit the release of data to physicians and providers of services. Routine use number 16 is being deleted because the information listed in the routine use as being releasable "at the request of the carrier to assist in the resolution of questions of medical necessity, utilization and overutilization," is no longer maintained in the CWF. Routine use number 17 is also being deleted because the activity listed in the routine use unnecessarily duplicates activities described in proposed routine use number 4. Disclosures permitted under routine use number 19 will now be covered by proposed routine use number 10, which will permit the release of data to a CMS contractor or grantee for the purposes of combating fraud and abuse. We propose to renumber published routine use number 22 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants. We will establish a new proposed routine use number 9 to allow disclosure to DOJ for the purpose of representing Agency employees involved in litigation.

The security classification previously reported as "None" will be modified to

reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS systems of records.

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: Support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO) and Quality Review Organizations (QRO), insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health care programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Richard Wolfsheimer, Health Insurance Specialist, Division of Fiscal Intermediary Systems and Common Working Files, Business Systems Operating Group, Office of Information Services, CMS, Room N2–09–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6160.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis For System of Records

In 1988, CMS modified an SOR under the authority of sections 1816, and 1874 of Title XVIII of the Act (the Act) (42 United States Code (U.S.C.) 1395h, and 1395kk). Notice of the modification to this system, "Common Working Files, System No. 09–70–0526" was published in the **Federal Register** (FR) at 53 FR 52806 (Dec. 29, 1988), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and MSP records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release CWF information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosure of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use. We will only disclose the minimum personal data necessary to achieve the purpose of CWF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require CWF information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require CWF data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require CWF data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires CWF information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires CWF data to enable them to assist in the implementation and maintenance of the Medicare program.

The Internal Revenue Service may require CWF data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. CWF data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the CWF data for review of unethical practices or nonprofessional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require CWF information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

State and other governmental workers' compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require CWF information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to CWF information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, VANS, and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require CWF information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require CWF information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The CWF data will provide for research, evaluations and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to

investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CWF information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, published at 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The CWF system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office of Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.,* tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CWF system.

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards: All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of CWF data. CWF information on individuals is completed

by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CWF data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0525

SYSTEM NAME:

Common Working Files (CWF) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at CMS Regional Offices, CMS Intermediaries and Carriers, and at locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare Secondary Payer (MSP) records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under the authority of sections 1816, and 1874 of Title XVIII of the Social Security Act (42 United States Code (USC) 1395h, and 1395kk).

PURPOSE(S):

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the agency related to this system of records, and combat fraud and abuse in certain Federally funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, published at 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a

court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CWF system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal records center and destroyed after another 2 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Intermediary and Fiscal Systems, Business Systems Operations Group, Office of Information Services, CMS, 7500 Security Boulevard, Room N2–09–27, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, inquiries should addressed to the social security office nearest the requester's residence, the appropriate intermediary, the CMS regional office, or write to the system manager listed above. The entity contacted will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 Code of Federal Regulations (CFR) 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. Information is obtained from other CMS systems of records and data.systems: Health Insurance Master Record, Intermediary Medicare Claims Records, Carrier Medicare Claims Records, MSP Record, Third Party Liability Record, Medicare Entitlement Record, Health Maintenance Organization Record, Hospice Record, and in the case of some MSP situations, through third party contacts. The medical information is provided by the providers of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCFA Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

1. Central Office Address

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

2. HCFA Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours:8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

3. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South, Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C □ MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/ RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm In), P.O. Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, TrailBlazer, P.O. Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, P.O. BOX 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, P.O. Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue S.W., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

4. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MS 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Bcbsnd (CO), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian Bcbsnd (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 10028.

[FR Doc. 02–1527 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan, Annual Progress and Services Report, and Budget Request.

OMB No.: 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act, States and Indian Tribes are to submit a five year Child and Family Services Plan, an Annual Progress and Services Report (APSR), and an annual budget request and estimated expenditure report (CFS–101). The plan is used by States and Indian Tribes to develop and implement services, and describe coordination efforts with other Federal, state and local programs. The APSR is used to provide updates and changes in the goals and services under the five year plan. The CFS–101 will be submitted annually with the APSR to apply for appropriated funds for the next fiscal year. The CFSP also includes the required State plans under seciton 106 of the Child Abuse Prevention Treatment Act and section 477 of title IV–E, the Chafee Foster Care Independence Program.

Respondents: 300.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	300	1	500	30,000
APSR	300	1	270	81,000
CFS–101	300	1	5	1,500
Estimated total annual burden hours				112,500

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 16, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1634 Filed 1–22–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 30, 2002, from 9 a.m. to 5 p.m.

Location: Holiday Inn, Versailles I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 30, 2002, the committee will discuss the influenza virus vaccine formulation for the 2002–2003 season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 22, 2002. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 9:45 a.m., and approximately 4:15 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 22, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 17, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1713 Filed 1–18–02; 1:52 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Methods for Preparing Bacillus Anthracis Protective Antigen for Use in Vaccines

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention described below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Methods for Preparing *Bacillus Anthracis* Protective Antigen for Use in Vaccines

Joseph Shiloach (NIDDK), Stephen Leppla (NIDCR), Delia Ramirez (NIDDK), Rachel Schneerson (NICHD), John Robbins (NICHD)

DHHS Reference No. E–023–02/0 filed 09 Nov 2001

This invention relates to improved methods of preparing *Bacillus anthracis* protective antigen (PA) for use in vaccines. PA is a secreted, non-toxic protein with a molecular weight of 83 KDa. PA is a major component of the currently licensed human vaccine (Anthrax Vaccine Adsorbed, AVA). Although the licensed human vaccine has been shown to be effective against cutaneous anthrax infection in animals and humans and against inhalation anthrax in rhesus monkeys, the licensed vaccine has several limitations: (1) AVA elicits a relatively high degree of local and systemic adverse reactions, probably mediated by variable amounts of undefined bacterial products, making standardization difficult; (2) the immunization schedule requires

administration of six doses within an eighteen (18) month period, followed by annual boosters; (3) there is no defined vaccine-induced protective level of antibody to PA by which to evaluate new lots of vaccines; and (4) AVA is comprised of a wild-type PA. It has been suggested that a vaccine comprising a modified purified recombinant PA would be effective, safe, allow precise standardization, and require fewer injections.

This invention claims methods of producing and recovering PA from a cell or organism, particularly a recombinant cell or microorganism. The invention claims production and purification of modified PA from a non-sporogenic strain of Bacillus anthracis. In contrast to other previously described methods, greater quantities of PA are obtainable from these cells or microorganisms. Specifically, a scalable fermentation and purification process is claimed that is suitable for vaccine development, and that produces almost three times more product than earlier-reported processes. This is accomplished using a biologically inactive protease-resistant PA variant in a protease-deficient non-sporogenic avirulent strain of *B. anthracis* (BH445). One of the PA variants described in the patent application lacks the furin and chymotrypsin cleavage sites.

The invention also relates to PA variants, and/or compositions thereof, which are useful for eliciting an immunogenic response in mammals, particularly humans, including responses that provide protection against, or reduce the severity of, infections caused by *B. anthracis*. The vaccines claimed in this application are intended for active immunization for prevention of *B. anthracis* infection, and for preparation of immune antibodies.

Dated: January 15, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1613 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Mentored Scientist Development Award.

Date: February 18–19, 2002.

Time: 7:00 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Roy L. White, PhD, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1608 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders K.

Date: February 10–11, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, Riverwalk, 830 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A.

Date: February 10–11, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, Riverwalk, 830 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.

Date: February 25–26, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: February 25–26, 2002.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 28–March 1, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037–1417.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific

Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1607 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Date: March 26–27, 2002.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jon M. Ranhand, PHD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children, 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1609 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: February 19–20, 2002.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, The Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1610 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Cancellation of Meeting

Notice is hereby given of the cancellation of the Biomedical Research and Research Training Review Subcommittee A, March 13, 2002, 8 a.m. to March 13, 2002, 5 p.m., Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD, 20815 which was published in the **Federal Register** on December 11, 2001, 66 FR 64048.

The meeting is cancelled due to reassignment of applications to another subcommittee.

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1611 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 3–5, 2002.

Time: 6 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: February 4–5, 2002.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, *nesbitt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Chemical Pathology Study Section.

Date: February 4–6, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

Date: February 4–5, 2002.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Patricia Greenwel, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwelp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 5, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.

Date: February 6–7, 2002.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rass M. Shayiq, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.

Date: February 7–8, 2002.

Time: 8:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: February 7–8, 2002.

Time: 8:30 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: February 7–8, 2002.

Time: 8:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Marcia Steinberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Prevention and Health Behavior 1.

Date: February 7–8, 2002.

Time: 9:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy, Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Luci Roberts, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 9:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *banner@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7, 2002.

Time: 7:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, MS, PHD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 9:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Marcia Steinberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1612 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Prevention Program Outcomes Monitoring System (PPOMS)—New—Section 516 of the Public Health Service Act [42 U.S.C. 290bb–22] directs SAMHSA's CSAP to "address priority substance abuse prevention needs of regional and national significance through the provision of knowledge development and application projects for prevention and the conduct or support of evaluations of such projects."

Since 1999, CSAP has used the National Registry of Effective Prevention Programs (REPP, OMB No. 0920–0210) to review and rate substance abuse prevention programs utilized nationwide. Through NREPP, CSAP has expanded its information collection to include programs conducted by entities external to CSAP, including state and local governments, nonprofit entities, and the private sector. Programs that are well implemented, rigorously evaluated, produce consistent positive results, and are able to assist in the dissemination effort are selected as model programs. Model programs are then promoted to substance abuse professionals and practitioners nationwide through various channels, including CSAP's State Initiative Grant recipients.

Involving the completion of matrices and a survey, PPOMS will quantify the extent of the field application of NREPP identified science-based prevention programs. PPOMS will also examine such parameters as program fidelity and adaptation, for science-based prevention programs identified through NREPP, as well as documented outcomes of program effectiveness.

PPOMS utilizes a data collection system that will consider several parameters related to CSAP science-based program replication. The PPOMS matrix and survey will: gauge practitioner access to CSAP science-based materials and programs, estimate the proportion of practitioners replicating these programs, quantify and explain barriers to replication and facilitating structures and mechanisms that aid in program replication, document the degree of fidelity and adaptations of program replications, and measure program replication outcomes. Knowledge of these factors will allow CSAP to better direct its dissemination of NREPP identified programs, provide access to training and technical assistance for practitioners, and gain a more comprehensive understanding of the decision making processes involved in choosing NREPP identified programs for replication.

Substance abuse practitioners will be identified to participate in PPOMS by state government officials involved in administering, funding, and monitoring prevention programs nationwide. Aside from State Incentive Grant coordinators and regional representatives for programs such as: the Department of Education's Safe and Drug Free Schools Program, and the Office of Juvenile Justice and Delinquency Prevention, various state and regional offices, and member organizations such as the National Prevention Network and the National Association of State Alcohol/Drug Abuse Directors, will refer prevention program practitioners and professionals to participate in PPOMS.

Data derived from the Prevention Program Outcomes Monitoring Systems (PPOMS) will be used by the Center for Substance Abuse Prevention (CSAP) to determine the extent, magnitude, and effectiveness of CSAP's science-based program replications. The Prevention Programs Outcomes Monitoring System will determine the efficacy of NREPP in identifying, promoting, and disseminating the best science-based substance abuse prevention programs to the field and subsequently, to the American public. The final report of PPOMS findings will contain appropriate information for use by governmental agencies, private organizations, and nonprofit entities.

Annual burden estimates for PPOMS are shown in the following table.

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
PPOMS Matrix	400	1	.167	67
PPOMS Survey	400	1	.333	133
Total	400			200

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 16, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–1598 Filed 1–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Silvicultural Activities, Gates County, North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mrs. Clarine Cooper and Mrs. Canzata Turner (Applicants) have applied for an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended. The proposed permit would allow take of one group of the red-cockaded woodpecker (*Picoides borealis*), a federally-listed, endangered species, incidental to silvicultural activities on the applicants' property in Gates County, North Carolina (Project).

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation measures, will individually and cumulatively have a minor or negligible effect on these species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE048566–0 in such comments. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Due to Court order, the Department of Interior has temporarily lost access to the internet and may not regain it by the time this notice is published. Commentors are encouraged to submit comments by mail or express courier, or to call (*see* **FOR FURTHER INFORMATION CONTACT**) to confirm whether our internet capability has been restored.

Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, Determination of Low Effect and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before February 22, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Raleigh Field Office, Post Office Box 33726, Raleigh, North Carolina 27636–3726 (Attn: John Hammond). Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE048566–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313; or Mr. John Hammond, Fish and Wildlife Biologist, Raleigh Field Office, (*see* **ADDRESSES** above), telephone 919/856–4520, Ext 28.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker is a territorial, non-migratory bird species once common in the southern Coastal Plain from east Texas to Florida and north to Maryland, Missouri, and Kentucky. Red-cockaded woodpeckers roost and nest in cavities excavated in large, living pine trees 60 years old or older. The red-cockaded woodpecker is a cooperative breeder that lives in family groups of one to nine birds, with each bird nesting in a separate cavity; the aggregate of cavity trees used by a group is called a cluster. Red-cockaded woodpeckers

prefer mature longleaf pine forests, but also inhabit loblolly, pond, slash, shortleaf, and Virginia pine stands. Without periodic fire to control hardwoods, red-cockaded woodpeckers abandon clusters as other cavity competitors and predators typical of hardwood habitats move in. The decline of the red-cockaded woodpecker is due primarily to loss of the old-growth, fire-maintained southern pine ecosystem as a result of logging, fire suppression, and conversion to non-forest land uses.

Recovery activities for the red-cockaded woodpecker are focused on Federal lands. Private lands are also important in the Service's recovery strategy to supplement habitat where the Federal land base is insufficient to support recovery, to establish and maintain connectivity with populations on public lands, and to provide a donor source of juvenile red-cockaded woodpeckers for translocation into designated recovery populations. Red-cockaded woodpeckers have generally declined on private lands because of a lack of active habitat management, and habitat fragmentation. The Service considers that red-cockaded woodpeckers geographically isolated on private lands, as on the Project site, will eventually cease to exist unless private landowners are encouraged to manage their lands for the species.

The Applicants intend to harvest 86 acres of merchantable timber and reforest the Project site in loblolly pine. This would result in the take of one group of red-cockaded woodpeckers (in recent surveys, numbering 2 adults and 2 juveniles) through harm due to alteration of their habitat. The affected group of red-cockaded woodpeckers are not part of a larger population. The nearest known groups outside the applicants' property are about five miles away and do not regularly interact with the group in the project area. This demographic isolation, in a region of fragmented, discontinuous habitat availability, greatly limits any contribution to species' recovery by the red-cockaded woodpeckers affected by the project. The biological goal of the applicants' HCP is to create a new, or augment an existing, group of red-cockaded woodpeckers, via translocation of juveniles from a donor population, into an area of better habitat and thereby help to consolidate a more stable red-cockaded woodpecker population within the species' historic range. This would be accomplished by the applicants' contribution of $13,000 into an existing National Fish and Wildlife Foundation fund. This fund is dedicated to purposes consistent with the mitigation goal stated above. Expenditures from this fund would be made as potential donor and recipient populations of red-cockaded woodpeckers are identified in the future.

The Applicants and the Service believe the biological goal of the HCP to augment or create a new group of red-cockaded woodpeckers at an area of better habitat which would help to consolidate a more stable red-cockaded woodpecker population at an opportune time in the future would offset project impacts while allowing the applicants profitable use of their property.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Service's regulations for approving such permit requests are contained in section 10(a)(2)(B) of the Act.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, which does not require the preparation of an EA or EIS. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the red-cockaded woodpecker and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We will evaluate the HCP and public comments to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether the issuance of the ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation to ensure the ITP will not jeopardize the continued existence of this species. We will use the results of this consultation, in combination with the above findings, to determine if the requirements of the ITP are met and whether or not to issue the ITP.

Dated: January 16, 2002.

John R. Lemon,

Acting Regional Director.

[FR Doc. 02–1599 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Servie implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued to the following companies:

Company	Activity	Location	Date issued
Phillips Alaska, Inc	Exploration	Rendezvous #3	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Tuvaaq 1, 2, and 3	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Pioneer #1	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Spark 6, 7, and 8	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Nova 1 and 2	Dec. 10, 2001.

Company	Activity	Location	Date issued
Phillips Alaska, Inc	Exploration	Mitre #1	Dec. 10, 2001.
Fairweather Geophysical	Exploration	NPR–A and Colville Rvr	Dec. 10, 2001.
BP Exploration	Production	Northstar Unit	Dec. 10, 2001.
Harding ESE, Inc	Production	Gwydyr Bay State A1	Dec. 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503 (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000)."

Dated: December 19, 2001.

David B. Allen,

Regional Director.

[FR Doc. 02–1665 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications for Funding Assistance Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program (CAP) for Fiscal Year (FY) 2002

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for NSDI Cooperative Agreements Program awards for fiscal year 2002, with performance to begin in August 2002 through September 1, 2003.

SUMMARY: The purpose of the NSDI Cooperative Agreements Program is to facilitate and foster partnerships, alliances and technology within and among various public and private entities to assist in building the NSDI. The NSDI consists of technologies, policies, organizations and people necessary to promote cost-effective production, ready availability, and greater utilization of high quality geospatial data among a variety of sectors, disciplines and communities.

The FY 2002 NSDI Cooperative Agreements Program will fund projects in four categories of activities: (1) Metadata implementation assistance, (2) metadata trainer assistance (3) clearinghouse integration with OpenGIS services, and (4) US and Canadian Spatial Data Infrastructure development. Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, non-profit foundations, and Federally acknowledged or state-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcements and application forms for the FY 2002 NSDI Cooperative Agreements Program are expected to be available on or about December 15, 2001. Applications must be received on or before March 15, 2002.

ADDRESSES: Copies of each Program Announcement #02HQPA0005 for the NSDI Cooperative Agreements Program will be available through the Internet at *www.usgs.gov/contracts/index.html* and *www.fgdc.gov*. Copies of Program Announcement #02HQPA0005 may also be obtained by writing to Patricia Masters, U.S. Geological Survey, Office of Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, VA 20192, or e-mailing *pmasters@usgs.gov*. Requests must be in writing; verbal requests will not be honored.

FOR FURTHER INFORMATION CONTACT: For NSDI technical information contact: David Painter, U.S. Geological Survey, Federal Geographic Data Committee, Mail Stop 590, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–5513, fax (703) 648–5755, e-mail *dpainter@fgdc.gov*.

For the NSDI Cooperative Agreements Program contact: Ms. Patricia Masterson, U.S. Geological Survey, Office of Acquisition and Grants, National Programs Assistance Branch, Mail Stop 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7356, fax (703) 648–7359, e-mail *pmasters@usgs.gov*.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program a total of $385,000 is available for award.

2002 NSDI Cooperative Agreement Program Categories

Category 1: "Don't Duck Metadata:" Metadata Implementation and Creation Assistance. The objectives for this category are the documentation of geospatial data through metadata creation and serving that documentation on the Internet through a NSDI clearinghouse. Under this category funds are provided for organizations needing assistance in receiving metadata training and in metadata creation.

Category 2: "Don't Duck Metadata:" Metadata Trainer Assistance. Funding in this category is for those organizations and individuals that can provide training assistance to other organizations in becoming skilled and knowledgeable in metadata creation.

Category 3: Clearinghouse Integration with OpenGIS services will provide funding to extend existing Clearinghouse Nodes with OpenGIS Consortium (OGC) compliant web mapping service capabilities and related standards-based services in a consistent way.

Category 4: Canadian/U.S. Spatial Data Infrastructure Project will provide funding assistance to support a collaborative project between organizations in the U.S. and Canada to coordinate, create, maintain, and share geospatial data to support decision-making over a common geography. The FGDC in partnership with the GeoConnections of Natural Resources Canada will fund lead organizations in their respective countries in a collaborative cross-border project.

Dated: January 14, 2002.

Carol F. Aten,

Chief, Administrative Policy and Services, U.S. Geological Survey.

[FR Doc. 02–1600 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–07–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Office of Management and Budget approved an information collection request for emergency clearance under 5 CFR 1320.13. This information collection request is cleared under OMB Control Number 1076–0094 through April 30, 2002. Basic information is requested of applicants for the issuance of a marriage license or for the dissolution of a marriage by a Court of Indian Offenses under 25 CFR 11. The Bureau of Indian Affairs is now seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted by March 25, 2002.

ADDRESSES: Written comments are to be mailed or hand delivered to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660–MIB, Washington, DC 20240 or e-mailed to *ralphgonzales@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, Bureau of Indian Affairs at (202) 208–4401 or *ralphgongales@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of Title 25, section 11.600(c)—Marriage, and Title 25, Section 11.606 (c)—Dissolution of Marriage. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on a one-page application requesting only basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on a one-page application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian reservation under the authority vested in the Secretary of the Interior by 5 U.S.C. 301, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction. Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 of the Code of Federal Regulations. Domestic relations are governed by 25 CFR 11.600 which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court, a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement, an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship;

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated; and

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of § 11.600, Marriage, Social Security number information is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian Offenses is located.

To comply with the requirement for dissolution of marriage, an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of § 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the 24 established Courts of Indian Offenses are entitled to receive the benefit of this action by the Court.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the 24 Courts of Indian Offenses annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated as 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100 per court annually, for the material

supplies and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, NW, Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays.

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 Office of Management and Budget control number.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: January 9, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

[FR Doc. 02–1623 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1420–01]

Notice of Intent To amend the Arcata Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to amend the Arcata Field Office's Arcata Resource Management Plan (RMP); Humboldt County, California.

SUMMARY: Notice is hereby given that it is the intent of the Bureau of Land Management (BLM) to consider amending the Arcata Field Office's Arcata RMP to address the disposal of one parcel of public land in Humboldt County for the purpose of accomplishing one land exchange. A plan amendment and environmental assessment will be prepared to analyze the effects of disposing of one parcel identified in Township 3 South, Range 2 West, Humboldt Base & Meridian, Section 11, NWSE. The land contains approximately 40 acres.

Public Participation

The public is invited to submit comments on this proposal for consideration in the environmental assessment. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This notice provides for a comment period for a proposed plan amendment. Pursuant to the regulations at 43 CFR 1600, for a period of 30 days from the publication of this notice in the **Federal Register**, interested parties may submit comments and recommendations regarding the proposed plan amendment to Lynda Roush, Field Manager, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Please reference exchange case file CACA 39912 FD/PT.

FOR FURTHER INFORMATION OR RELATED DOCUMENTS CONTACT: Charlotte Hawks, Realty Specialist, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Telephone: (707) 825–2319.

Daniel E. Averill,

Assistant Field Manager, Arcata.

[FR Doc. 02–1669 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of The Record of Decision for the Final Supplemental Environmental Impact Statement for The Old Agency Area (Project 3P13) of the Natchez Trace Parkway

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior, National Park Service, announces the availability of a signed Record of Decision (March 23, 2001) on the Final Supplemental Environmental Impact Statement for the Old Agency Area (Project 3P13) of the Natchez Trace Parkway.

The Natchez Trace Parkway was established in 1938 to commemorate the Old Natchez Trace, a primitive network of trails that stretched approximately 716 kilometers (444 mi.) from Natchez, Mississippi, to Nashville, Tennessee. Today, two portions of the parkway motor road comprising about 32 kilometers (20 mi.) of its total length remain unfinished in Mississippi. The 1.8 kilometer (1.1 mi.) unfinished segment of the parkway known as 3P13 is within the city of Ridgeland and, is the focus of the Final Supplemental Environmental Impact Statement (FSEIS) for the Old Agency Road Area and the Record of Decision.

In 1998, public workshops produced 16 conceptual alternatives for construction of the parkway motor road and local public roads within the project area. Following additional public review and NPS evaluation of the conceptual alternatives, five concepts were determined to be the most viable and consistent with the proposed project's purpose. These five concepts were further refined and were analyzed in the Draft and Final Supplemental Environmental Impact Statement for the Old Agency Road Area as Alternatives 1, 2, 3, 4, and 5. Alternative 1 is the alternative that was originally proposed in the 1978 Final Environmental Impact Statement for Natchez Trace Parkway; it is the no-action alternative and served

as a baseline for comparing the other alternatives.

On August 3, 1998, the National Park Service published in the **Federal Register** a notice of intent to prepare a Draft Supplemental Environmental Impact Statement for the Old Agency area (Project 3P13) of the Natchez Trace Parkway.

The National Park Service will implement the Revised Proposed Action as described in the Final Supplemental Environmental Impact Statement for the Old Agency Road Area (Project 3P13) of the Natchez Trace Parkway which was made available to the public in February of 2001.

The Selected Action (Revised Proposed Action) was developed after public review of the Draft Supplemental Environmental Impact Statement. Under the Selected Action, the Natchez Trace Parkway motor road will cross the Old Natchez Trace (Old Agency Road) approximately at-grade and closely follow the existing topography through the NPS right-of-way connecting existing parkway to the east and to the west of the project area. To provide local east-west vehicular circulation and traffic capacity, Old Agency Road Relocated will be constructed south of the parkway motor road from near Whippoorwill Lane to Highland Colony Parkway. To further enhance local north-south traffic circulation through the project area, traffic will crossover the parkway via a bridge which will link Old Agency Road and Old Agency Road Relocated. The new crossover road between Old Agency Road and Old Agency Road Relocated will begin approximately across from St. Andrew's school ballfield parking lot. Access to the Choctaw Agency site will be provided directly from the parkway motor road, and a parking area for visitors will be developed. Old Agency Road from near Whippoorwill Lane to Richardson Road will be closed to vehicular traffic and restored to Old Natchez Trace appearances (the asphalt road surface will be removed, the surface will be graded to drain, planted with turf grasses, and kept mowed); vehicular traffic will be rerouted to Old Agency Road Relocated.

Access to Interstate 55 to the east of the project area will be through the remaining existing Old Agency Road as well as along Old Agency Road Relocated to Highland Colony Parkway. In addition, short portions of Brame Road, and a portion of the northern entrance to the Dinsmor subdivision will be revegetated, and a portion of the Greenwood Plantation driveway will also be closed within the NPS right-of-way and restored to its appearance of historical significance. Access to Brame Road, Dinsmor subdivision and the Greenwood Plantation will be via the new Old Agency Road Relocated. A deed-reserved driveway will be provided from Old Agency Road Relocated to a tract of land south of the parkway and just east of Dinsmor subdivision. Access to the Canterbury and Windrush subdivisions will continue to be accessed via Old Agency Road. Old Agency Road Relocated will provide access and circulation for local through-traffic, and a new intersection will be constructed at Highland Colony Parkway.

Natural resource impacts (such as vegetation, soils, wildlife) for the Selected Action and each of the five alternatives considered are very similar because the parkway motor road would follow nearly the same alignment through the NPS right-of-way in each alternative. In general, natural resource impacts are considered negligible under the Selected Action and all alternatives due to the already highly fragmented landscape and preponderance of locally abundant and edge-adapted plant and animal species occupying the project area. No federally or state threatened or endangered species or their habitats are impacted under the Selected Action. The Selected Action would negatively impact 0.62 ha (1.53 ac) of Palustrine wetlands. Negative wetland impacts between the Selected Action and the alternatives would vary by just 0.2 ha (0.5 ac). As described in the wetland Statement of Findings (reviewed and approved by the Southeast Regional Director, National Park Service), wetland loss will be mitigated at a 2:1 ratio. Implementation of the Selected Action will not result in impairment from indirect, direct, or cumulative impacts and will not violate the NPS Organic Act.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the Record of Decision and Statement of Findings, contact the Superintendent of the Natchez Trace Parkway at (662) 680–4025 or at the following address: Wendell A. Simpson, Superintendent, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804.

Dated: June 21, 2001.

Editorial Note: This document was received at the Office of the Federal Register on January 17, 2002.

Wally Hibbard,

Regional Director, Southeast Region.

[FR Doc. 02–1694 Filed 1–18–02; 11:21 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the suspended investigation on fresh tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), 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: On January 4, 2002, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (66 FR 49975, October 1, 2001) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy,

and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 16, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1569 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–409–412 and 731–TA–909 (Final)]

Low Enriched Uranium From France, Germany, The Netherlands and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Reopening of the record and request for comments for the subject investigations.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice that it is reopening the record in these investigations for the purpose of considering new factual information submitted on January 15, 2002, by petitioner USEC Inc. concerning the agreement between the governments of the United States and Russia regarding the purchase of certain low enriched uranium. The Commission is not reopening the record for any purpose other than to receive comments from any party on this new factual information. On or before January 17, 2002, parties may submit final comments, not to exceed 10 pages, double-spaced and single-sided, on stationery measuring 8½ by 11 inches, addressing only this new factual information, but such final comments must not contain any new factual information not previously submitted for the record and must otherwise comply with section 207.68 of the Commission's rules.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also 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 Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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.

SUPPLEMENTARY INFORMATION: On September 5, 2001, the Commission published notice establishing a schedule for the conduct of the final phase of the subject investigations (66 FR 46467, September 5, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations and on November 19, 2001, the Commission published notice establishing a revised schedule for the investigations (66 FR 57986, November 19, 2001).

For further information concerning these investigations see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 16, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1570 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–988 (Preliminary)]

Pneumatic Directional Control Valves From Japan

AGENCY: 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–988 (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 Japan of pneumatic directional control valves, provided for in subheading 8481.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. 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 February 28, 2002. The Commission's views are due at Commerce within five business days thereafter, or by March 7, 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: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), 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 January 14, 2002, by The Pneumatics Group, a trade association of pneumatic directional control valve producers and wholesalers which includes Festo Corp. of Hauppage, NY; IMI Norgren, Inc. of Littleton, CO; Numatics, Inc. of Highland, MI; and Parker Hannifin Corp. of Cleveland, OH.

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 1 p.m. on February 4, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than January 28, 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 February 7, 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 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.

Issued: January 16, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1571 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–413, 731–TA–913–918 (Final)]

In the Matter of Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom; Notice of Commission Determination to Conduct a Portion of the Hearing *in Camera*

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents BDG Edelstahl, Corus Engineering Steels, Edelstahl Witten-Krefeld GmbH, Firth Rixon Special Steels Ltd., Krupp Edelstahlprofile GmbH, Sandvik Metinox Ltd., Stahlwerk Ergste Westig GmbH and Walzwerke Einsal GmbH (collectively "Respondents"), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for January 17, 2002, *in camera*. *See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087, e-mail mbernstein@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Respondents have justified the need for a closed session. Respondents seek a closed session to allow testimony concerning the manner in which internal transfers of individual domestic stainless steel bar producers should be valued and related issues regarding financial performance. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a confidential presentation by Respondents and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioners and questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigations. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, Inv. Nos. 701–TA–413, 731–TA–

913–918 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: January 16, 2002.
By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1568 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Environmental Bankruptcy Settlement in *In Re American Western Refining, L.P.* and Related Inability To Pay Settlement With Indian Refining I Ltd. Partnership and Indian Refining and Marketing I, Inc.

Notice is hereby given that a proposed settlement entered into by the United States on behalf of U.S. EPA and the Coast Guard, the State of Illinois on behalf of Illinois EPA, and American Western Refining, L.P. was filed on October 26, 2001 in *In re American Western Refining, L.P.*, No. 96–01755 (Bankr. D. Del.) with the United States Bankruptcy Court for the District of Delaware. The proposed settlement is contained in section 6.5 of the Debtor's proposed Plan of Liquidation and would resolve certain claims of the United States and Illinois against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, section 311 of the Clean Water Act, 33 U.S.C. 1321, the Oil Pollution Act, 33 U.S.C. 2701 *et seq.* relating to the American Western Refinery Superfund Site in Lawrence County, Illinois. Notice is also hereby given that a proposed related administrative settlement has been entered into by the United States on behalf of U.S. EPA and the Coast Guard, the State of Illinois on behalf of the Illinois Environmental Protection Agency, Indian Refining I Limited Partnership, f/k/a Indian Refining Limited Partnership, and Indian Refining and Marketing I, Inc., f/k/a Indian refining and Marketing, Inc. *In re Indian Refinery—Texaco Property (Indian Refining I Limited Partnership, et al.)*, U.S. EPA Region 5, Docket No. V–W–02–C–668. Under the settlements, debtor American Western Refining, L.P. shall pay the Coast Guard $861,865 as an Allowed Administrative Expense Claim and the debtor will place its refinery property in a liquidating trust and provide certain, funding and consideration that will facilitate cleanup of the facility.

The Department of Justice will receive comments relating to the United States' approval of the terms of proposed settlements for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *In re American Western Refinery Company, et al.*, D.J. Ref. No. 90–11–2–1307A. Copies of the proposed settlements may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed settlements may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the proposed settlements, please enclose a check in the amount of $2.75 for the settlement with debtor American Western Refinery, L.P. and $8.75 for the settlement with Indian Refining I Limited Partnership (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1560 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Degree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed decree embodying a settlement in *United States* v. *Chevron Environmental Management Co., et al.* No. CV 01–11162 MMM (JWJx), was lodged on December 28, 2001, with the United States District Court for the Central District of California, Western Division.

In a complaint filed concurrently with the lodging of the consent decree, the United States, the State of California, and the California Hazardous Substance Account, seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") and by the California Department of Toxic Substances Control ("DTSC"), pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, in response to releases of hazardous substances at the Operating Industries, Inc. ("OII") Superfund site in Monterey Park, California. Under the proposed consent decree, the settling defendants have agreed to pay response costs and fund perform future response actions at the OII Site.

Overall this consent decree has a combined value of approximately $340 million, contributed by the respective parties in cash, or work commitments and reimbursement of past response costs. The settlement addresses the full implementation of the final remedy at the Site. Under this settlement, Work Defendants will perform the Work required by the consent decree, valued at approximately $297 million ($262 million in work plus $35 million in future oversight costs), which will be funded through Work Defendant contributions, payments by Cash Defendants and escrow accounts established under prior settlement or to be established under this settlement. EPA will receive approximately $10 million to be placed in a Special Account, which is available to pay for Excluded Work. The settlement also includes an agreement by the United States Navy to pay approximately $1 million to resolve the Navy's potential liability at the OII site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, and sent: (1) c/o Noel Wise, United States Department of Justice, 301 Howard Street Suite 1050, San Francisco, CA 94105; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States*

Attorney for the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94105, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street. Los Angeles, California 90012. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $250.50 to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Chevron Environmental Management Co., et al.*, DOJ Ref. #90–11–2–156/4.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1566 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Revision to Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act Published on January 8, 2002

The notice previously published on January 8, 2002, is hereby revised to provide new instructions for sending comments on the proposed Consent Decree and for obtaining copies of the proposed Decree.

In accordance with the Departmental Policy, 28 CFR 50.7, and section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), notice is hereby given that a Consent Decree in *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc. and TI Automotive Systems Corp.*, Civil Action No. 01–CV–6109, was lodged with the United States District Court for the Eastern District of Pennsylvania on December 6, 2001. This Consent Decree resolves certain claims of the United States' against Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp. ("Settling Defendants") under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a). The Consent Decree requires the Settling Defendants to perform remedial work at the Site consisting of all Operable Unit 2 response activities (as defined in the Decree) and to reimburse the Superfund for past response costs in the amount of $7 million and to pay future response costs for the Boarhead Farms Superfund Site located in Bridgeton Township, Pennsylvania.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this revised notice. The delivery of U.S. Postal Service regular mail has been disrupted, and comments sent by U.S. Postal Service, first-class mail are not expected to be received in a timely manner. Therefore, please address comments to Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, and send: (1) c/o Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; and/or (2) by facsimile to (202) 353–0296. Each communication must refer on its face to *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ # 90–11–2–06036/2.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by telefaxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, at (202) 616–6584; telephone confirmation (202) 514–1547. There is a charge for the copy (25 cents/page reproduction cost). When telefaxing your request for a copy, please mail a check payable to the "U.S. Treasury," in the amount of $23.25 (for Decree without appendices) or $29.00 (for Decree with appendices) to: Consent Decree Library, U.S. Department of Justice, c/o U.S. Environmental Protection Agency, Region III, 1560 Arch Street, Philadelphia, PA 19103–2029. The check must refer to *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ No. 90–11–2–06036/2.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–1561 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of Consent Decrees Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 9, 2001, a proposed consent decree in *United States, et al.*, v. *East Lake Management and Development Corp.*, Civil Action No. 01 C 7581, and on October 11, 2001, a proposed consent decree in *United States, et al.*, v. *Wolin-Levin, Inc.*, Civil Action No. 01 C 7580, were lodged with the United States District Court for the Northern District of Illinois. Notice of the lodging of these consent decrees was first published by the Department of Justice in the **Federal Register** on November 15, 2001 (66 FR 57 483). The Department of Justice is republishing the notice of lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original notice of lodging be resubmitted to the U.S. Attorney's Office for the Northern District of Illinois, as set forth below.

The consent decrees settles claims against management agents of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in each of its complaints that the defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under both consent decrees, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, and to perform lead-based paint abatement. In addition, under each decree, each defendant will pay a penalty of $25,000 to be divided among the United States, the State of Illinois, Cook County, and the City of Chicago. Lastly, each of the consent decrees calls for the performance of Child Health Improvement Projects ("CHIPs"), which are projects proposed by HUD to address issues of childhood lead poisoning in Chicago. Wolin-Levin, Inc., will contribute $100,000 as a CHIP to

the City of Chicago to be used for additional lead-based paint abatement activities in Chicago, primarily replacement of windows. East Lake Management and Development Corp. will contribute $77,000 as a CHIP to community-based health centers to perform blood lead level screening of children and create educational programs in low income areas in South Chicago and Cook County. The defendants manage over 225 buildings with over 10,000 residential units.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. As noted above, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments that are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Jonathan C. Haile, Assistant United States Attorney, 219 S. Dearborn St., 5th Floor Chicago, IL 60604; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Consent Decrees may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $12.25 for the consent decree in *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and $14.00 for the consent decree in *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120, to : Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1591 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Honeywell International Inc.* (E.D. Va.), Civil Action No. 3:01CV789 was lodged on November 23, 2001 with the United States District Court for the Eastern District of Virginia. The Consent Decree resolves the United States' claims against defendant, Honeywell International Inc., with respect to violations of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") at its chemical manufacturing facility in Hopewell, Virginia.

Under the Consent Decree, defendant will pay the United States $110,000 in penalties. In addition, the defendant will implement five Supplemental Environmental Projects, or "SEPs," at an estimated cost of $772,000. These SEPs include (1) Within ten months of entry of the Consent Decree and at a cost of no less than $375,000, the conversion of a refrigeration unit from use of chlorfluorocarbon-based refrigerant to hydrofluorocarbon-based refrigerant; (2) within seventeen months of entry of the Consent Decree and at a cost of no less than $300,000, the installation of an air emissions control system to reduce the release of ammonia; (3) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $35,000, the purchase of a "reverse 911" interactive notification system for the Hopewell Local Emergency Planning Committee; (4) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $20,000, the purchase of a skirted boom and trailer and associated training services for the Henrico Regional Hazardous Incident Team; and (5) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $42,000, the purchase of mass decontamination equipment and associated training for emergency response teams at two local medical centers, the John Randolph Medical Center in Hopewell, VA and the Southside Regional Medical Center in Petersburg, VA.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. This notice was previously published in the **Federal Register.** As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular or overnight mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed and sent: (1) to: Janet E. Sharke, USEPA Region III (3EC00), 1650 Arch Street, Philadelphia, PA 19103; and/or (2) by facsimile to (202) 353–0296, to Chief, Environmental Enforcement Section; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Honeywell International Inc.* DOJ reference number 90–7–1–06900.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Virginia, 600 East Main Street, Suite 1800, Richmond, Virginia and at the Region III Office of the Environmental Protection Agency, 1650 Arch Street Philadelphia, PA 19103. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547., There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $13.00. to: Consent Decree Library, U.S.

Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Honeywell International Inc.* DOJ reference number 90–7–1–06900.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1565 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 4, 2001, a proposed consent decree in *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, Civil Action No. 01 C 7582, was lodged with the United States District Court for the Northern District of Illinois. Notice of the lodging of this consent decree was first published by the Department of Justice in the **Federal Register** on November 15, 2001 (66 FR 57,485). The Department of Justice is republishing the notice of lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original notice of lodging be resubmitted to the U.S. Attorney's Office for the Northern District of Illinois, as set forth below.

The consent decree settles claims against management agents and owners of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that each defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States and the State of Illinois administrative penalties in the amount of $40,000. The defendants manage and/or own 25 buildings with over 650 residential units.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. As noted above, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Jonathan C. Haile, Assistant United States Attorney, 219 S. Dearborn St., 5th Floor, Chicago, IL 60604; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, D.J. #90–5–1–1–07056.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $12.50, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, D.J. #90–5–1–1–07056.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1590 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Westvaco Corporation*, Civil Action No. 02–30006–KPN, was lodged with the United States District Court for the District of Massachusetts on January 15, 2001. In the complaint in this action, the United States alleges that Westvaco Corporation ("Westvaco") violated the Clean Air Act, 42 U.S.C. 7401, *et seq.*, at its Springfield, Massachusetts plant by emitting volatile organic carbons from its flexible packaging coating operation at various times at a higher emissions rate than permitted under its State air permit. The complaint also alleges that Westvaco did not timely submit an application for an air permit under Title V of the Clean Air Act. The complaint seeks civil penalties for these violations under section 113 of the Clean Air Act, 42 U.S.C. 7413.

The proposed Consent Decree provides that Westvaco will pay a civil penalty of $117,910. Westvaco closed its flexible packaging operation last year. As part of the settlement, Westvaco also agreed that it would acquire and permanently retire the emissions credits that it was entitled to from the closing of the flexible packaging coating operation.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail through the U.S. Postal Service is not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent (1) c/o Karen L. Goodwin, Assistant United States Attorney, Federal Building and Courthouse, 1550 Main Street, Room #310, Springfield, Massachusetts 01103; and/or (2) by facsimile to (202) 353–0296; and/or (3)

by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Westvaco Corporation,* D.J. Ref. 90–5–2–1–07312.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, Federal Building and Courthouse, 1550 Main Street, Room #310, Springfield, Massachusetts 02114. A copy of the Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check, payable to the "U.S. Treasury", in the amount of $4.00, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Westvaco Corporation,* Ref. No. 90–5–2–1–07312.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–1562 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on September 28, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Lead-Acid Battery Consortium ("ALABC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lomold Ventures (Pty) Ltd., Paarl, South Africa has been added as a party to this venture. Also, Cominco, Ltd., Toronto, Ontario, Canada has changed its name to Teck Cominco Metals Ltd.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40724).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1559 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Standards-Based Interoperable Guideline System Joint Venture

Notice is hereby given that, on November 26, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IDX Systems Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are IDX Systems Corp., Seattle, WA; Apelon, Inc., Ridgefield, CT; Stanford University, Stanford, CA; Mayo Clinic Rochester, Rochester, MN; IHC Health Services, Inc., Salt Lake City, UT; and Board of Regents, University of Nebraska, University of Nebraska Medical Center, Omaha, NE. The nature and objectives of the venture are the development of healthcare software consisting of a computable format for representing clinical interoperable guidelines, a tool for authoring and editing these guidelines, and software which maps and integrate guideline content into clinical information systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1592 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on December 18, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, General Pattern Company, Blaine, MN has been added as a party to this venture.

Also, Electronic Data Systems, Troy, MI; Interconnection Technology Research Institute (ITRI), Austin, TX; Softzone Engineering, Inc., Plymouth, MI; Johnson Manufacturing Company, Inc., Princeton, IA; Tecumseh Products Company, Tecumseh, MI; and University of New Orleans, New Orleans, LA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 22, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the

Act on September 25, 2001 (66 FR 49044).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1563 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on September 21, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kana Software, Menlo Park, CA has been added as a party to this venture. Also, Broadbase Software, Inc., Menlo Park, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Personalization Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 15, 2000, Personalization Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (65 FR 49266).

The last notification was filed with the Department on June 1, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 2001 (66 FR 35459).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1558 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Presidential Task Force on Employment of Adults With Disabilities; Notice of Postponement of Meeting

The Department of Labor published notice of an open public meeting of the Presidential Task Force on Employment of Adults with Disabilities in the **Federal Register** on December 17, 2001 (66 FR 64987). That meeting has been postponed. The meeting will be rescheduled and its new date will be announced and published in this publication.

FOR FURTHER INFORMATION CONTACT: Paul Bennett at 202/693–4939 (voice), 202/693–4929 (fax), or 202/693–4920 (TTY).

Dated: January 16, 2002.

Gary B. Reed,

Acting Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 02–1624 Filed 1–22–02; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 11, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@ nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by

the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–02–1, 2 items, 2 temporary items). Records relating to endangered species and their habitats. Included are correspondence, reports, briefings, and graphics pertaining to Army compliance with the Endangered Species Act. Also included are electronic copies of records created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–02–4, 2 items, 2 temporary items). Records relating to public works activities such as facilities repair, maintenance, and minor construction projects. Included are service orders, work requests, and related documents. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–02–5, 2 items, 2 temporary items). Correspondence relating to the criteria, standards, and practices employed in the maintenance, repair, operation, conservation, and improvement of public works at military installations. Also included are electronic copies of documents created using electronic mail and word processing. This schedule reduces the retention period for the recordkeeping copies of these files, which were previously approved for disposal, and also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–02–6, 2 items, 2 temporary items). Records relating to notarial services. Included are exceptions to policy, notarial certifications, and memorandums granting individuals notarial authority. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–02–7, 2 items, 2 temporary items). Records relating to nonappropriated fund employee job descriptions. Included are master job descriptions, job standards, and similar information used in the analysis, development, and evaluation of specific jobs. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Commerce, U.S. Patent and Trademark Office (N1–241–02–1, 3 items, 2 temporary items). Records documenting provisional patent applications submitted by inventors to claim an early effective filing date for submitted patents that are not referenced in applications that are issued as patents. Included are written descriptions of the inventions, applicable drawings, related filing information from applicants, and reference copies of these records. Proposed for permanent retention are recordkeeping copies of provisional patent application files referenced in applications that are issued as patents.

7. Department of Commerce, National Oceanographic and Atmospheric Administration (N1–370–00–3, 58 items, 46 temporary items). Records documenting the planning and production of nautical charts and hydrographic surveys that define the navigable waters of the United States. Included are field survey data, planning and coordination files, production and quality assurance records, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such final products as nautical charts, hydrographic surveys, and supplementary reports as well as data concerning wrecks and obstructions.

8. Department of Defense, Army and Air Force Exchange Service (N1–334–02–1, 2 items, 2 temporary items). Short term records relating to the individual retirement benefits of nonappropriated fund employees. Included are such records as annuity payment schedules, individual disbursements, and qualified domestic relations orders. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of Energy, Assistant Secretary for Fossil Energy (N1–434–01–7, 7 items, 4 temporary items). Records of the Naval Petroleum and Oil Shale Reserves Program relating to natural gas and crude oil contracts and estimated revenue from sales. Included are such records as natural gas contract summaries, public relations requests, invitations for bids, contract amendments and awards, and related correspondence. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as studies concerning marketing and sales strategies, engineering and technical studies, state-of-the-art recovery procedures, quality assurance requirements, and real estate agreement files.

10. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–01–4, 11 items, 11 temporary items). Records relating to the Clinical Laboratory Improvement Program under which labs are tested to ensure that the work they do is accurate and reliable. Included are correspondence, approvals, summary reports pertaining to annual proficiency testing, records relating to annual reviews of laboratory accreditation organizations, and fiscal records pertaining to user fees paid by labs taking part in the program. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of Housing and Urban Development, Community Planning and Development (N1–207–02–2, 4 items, 4 temporary items). Economic Development Initiative targeted grant case files, which contain such documents as applications, correspondence, progress reports, and budget records. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Housing and Urban Development, Fair Housing and Equal

Opportunity (N1–207–02–3, 4 items, 4 temporary items). Fair Housing Initiative Program grant application case files, which consist of such records as applications, payment schedules, statements of work, and related correspondence. Also included are electronic copies of records created using electronic mail and word processing.

13. Department of the Interior, U.S. Geological Survey (N1–57–02–1, 8 items, 8 temporary items). Records relating to agency Y2K activities, including the development of policies and plans and their implementation and the analysis of specific systems. Also included are electronic copies of records created using electronic mail and word processing.

14. Department of Labor, Employment Standards Administration (N1–448–01–4, 78 items, 67 temporary items). Records of the Office of Management, Administration and Planning relating to such matters as management reviews, studies and initiatives, the implementation of plain language, continuity of Government, agency assistance to colleges, tort litigation reporting, the provision of data to the Immigration and Naturalization Service, financial accounting, strategic planning, and program evaluation. Also included are electronic copies of documents created using electronic mail and word processing. Most of the series included in this schedule were previously approved for disposal. This schedule shortens the retention periods for several of these series, including employee conduct investigations, files relating to financial management and chargebacks, and materials prepared in response to congressional inquiries. The disposition instructions for most of the other previously approved series in the schedule are unchanged but are included since the agency wishes all of the Office's records to be covered by a single schedule. Proposed for permanent retention for the first time are recordkeeping copies of biographical data concerning high level employees. Recordkeeping copies of such files as organization charts and reorganization studies, mission statements, records relating to legislation, briefing books, and press releases were previously approved as permanent.

15. National Credit Union Administration, Office of the Chief Information Officer (N1–413–02–2, 57 items, 55 temporary items). Electronic systems relating to credit union supervision, examination, and insurance activities. Included are inputs, outputs, system data, and the related documentation for systems containing information concerning such matters as the current status and history of active and inactive credit unions, member share and loan transactions, the identities of directors and other credit union officials, correspondence tracking within the agency's Office of Corporate Credit Unions, and insurance related services. Proposed for permanent retention are the electronic data and related documentation for one system that pertains to the annual examination of credit unions to evaluate their soundness.

Dated: January 9, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–1606 Filed 1–22–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions, Application for Funds.

Description: NCUA requests this information form credit unions to assess financial ability to repay the loans and to ensure the funds are used to benefit the institution and community it serves.

Respondents: Community credit unions which request loans from the revolving loan program.

Estimated No. of Respondents/Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $3,126.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1551 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0151.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Leasing—Statistical Documentation Required for a Guarantor of a Residual Value.

Description: Part 714 of NCUA's Rules and Regulations directs federal credit unions to evaluate whether a guarantor of a residual value has the financial resources to meet the guarantee.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 380.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Recordkeeping. On occasion.

Estimated Total Annual Burden Hours: 760.

Estimated Total Annual Cost: $13,300.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1552 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0152.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Management Official Interlocks.

Description: Part 711 of NCUA's Rules and Regulations directs federally insured credit unions that want to share a management official with another financial institution to either apply for approval from the NCUA Board or maintain records to show the eligibility for a small market share exemption.

Respondents: All federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 1.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping. Upon application.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1553 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0011.

Form Number: NCUA 9600.

Type of Review: Extension of a currently approved collection.

Title: Application for Insurance of Accounts State-Chartered Credit Unions.

Description: Section 201 of the Federal Credit Union Act (12 U.S.C. 1781) requires state-chartered credit unions desiring federal insurance to submit an application. The requirement also applies to federal credit unions converting to state charters and desiring federal insurance.

Respondents: State chartered credit unions and federal credit unions converting to state charter that desire federal insurance of member accounts.

Estimated No. of Respondents/ Recordkeepers: 34.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Reporting. Upon application for federal insurance.

Estimated Total Annual Burden Hours: 136.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1554 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement submitted:

1. *The title of the information collection:* NRC Form 450, "General Assignment".

2. *Current OMB approval number:* OMB No. 3150–0114.

3. *How often the collection is required:* Once during the closeout process.

4. *Who is required or asked to report:* Contractors, Grantees, and Cooperators.

5. *The number of annual respondents:* 100.

6. *The number of hours needed annually to complete the requirement or request:* 200 hours (2 hours per response).

7. *Abstract:* During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contractor performance.

Submit, by March 25, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC homepage site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 16th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1633 Filed 1–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; City of Dalton, Georgia; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Issuance of Renewed Facility Operating Licenses; Nos. DPR–57 and NPF–5 for an Additional 20-year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued (1) Renewed Facility Operating License No. DPR–57 (the Unit 1 license) and (2) Renewed Facility Operating License No. NPF–5 (the Unit 2 license), to Southern Nuclear Operating Company, Inc., operator of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensees). The Unit 1 license authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 1, by the licensees at reactor core power levels not in excess of 2763 megawatts thermal in accordance with the provisions of the Unit 1 license and its Technical Specifications. The Unit 2 license authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 2, by the licensees at reactor core power levels not in excess of 2763 megawatts thermal in accordance with the provisions of the Unit 2 license and its Technical Specifications.

The Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Plant Hatch), are pressurized water nuclear reactors located near Baxley, in Appling County, Georgia.

The application for the renewed licenses complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed operating licenses and of opportunity for hearing regarding the proposed issuance of these renewed operating licenses was published in the **Federal Register** on April 3, 2000 (65 FR 17543—17544).

For further details with respect to these actions, see (1) the Southern Nuclear Operating Company's License Renewal Application for Plant Hatch, dated February 29, 2000, as supplemented by letters dated May 31, July 26, August 11, August 21, August 29, August 31, October 10, and December 15, 2000, and February 9, 2001; (2) the Commission's Safety Evaluation Reports dated February 7 and October 5, 2001 (NUREG–1803); (3) the licensees' Safety Analysis Report; and (4) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 4), dated May 2001. These items are available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Copies of the Renewed Facility Operating License Nos. DPR–57 and NPF–5, may be obtained by writing to U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the Safety Evaluation Report (NUREG–1803) and the Final Environmental Impact Statement (NUREG–1437, Supplement 4) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (telephone number 1–800–553–6847, *(http://www.ntis.gov/ordernow)*, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (telephone number 202–512–1800, *(http://www.access.gpo.gov/sudocs)*. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account, or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 15th day of January 2002.

For the Nuclear Regulatory Commission.

William F. Burton,

Project Manager, License Renewal and Environmental Impacts Program. Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1632 Filed 1–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 21, 28, February 4, 11, 18, 25, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 21, 2002

Wednesday, January 23, 2002

9 a.m.—Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.—Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 30, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2 p.m.—Discussion of Intergovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

2 p.m.—Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, February 20, 2002

2:55 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301)–415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 17, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–1711 Filed 1–18–02; 10:26 am]

BILLING CODE 7590–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0006).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0006, the Peace Corps Volunteer Reference Form–PC 1532. The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Mr. Jeffrey Herrell, Peace Corps, Office of Volunteer and Recruitment Services, 1111 20th Street, NW., Room 6152, Washington, DC 20526. Mr. Herrell can be contacted by telephone at 202–692–1869 or 800–424–8580 ext 1869. Comments on the form should also be addressed to the attention of Mr. Herrell and should be received on or before March 25, 2002.

Information Collection Abstract

Title: Peace Corps Volunteer Reference Form PC 1532.

Need for and Use of This Information: The Peace Corps Volunteer Reference Form is used to gather information about individuals who have submitted applications, are basically qualified, and are nominees for volunteer service. The form is an integral part of the screening and selection process conducted by the Office of Volunteer Recruitment and Selection. Such information as past criminal records, severe mental problems, poor interpersonal relationships or emotional immaturity is used by the agency in their consideration of applicants. The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. There is no other means of obtaining the required data. This program also fulfills the first goal of the Peace Corps as required by Congressional legislation.

Respondents: Returned Peace Corps Volunteers.

Respondent's Obligation to Reply: Individuals who voluntarily agree to

serve as a references for Peace Corps applicants.

Burden on the Public:

a. *Annual reporting burden:* 13,692 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 30 minutes.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 27,384.

f. *Estimated cost to respondents:* $8.78.

At this time, responses will be returned by mail.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1587 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Career Information Consultants Waiver form, OMB Number 0420–0531. This form is completed voluntarily by returned Peace Corps Volunteers and professionals in specific career fields. This information will be used by Returned Volunteer Services to assist returned Peace Corps Volunteers with re-entry transition issues. participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Returned Volunteer Services' outreach program. This is a renewal of an active OMB Control number. No comments were received in response to the Peace Corps' earlier **Federal Register** Notice (May 21, 2001, Volume 66, Number 98, p. 28005 for 60 days).

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. Elvira May, Office of Returned Volunteer Services, Peace Corps, 111 20th Street, NW., Room 2134, Washington, DC 20526. Ms. May can be contacted by telephone at 202–692–1445 or 800–424–8580 ext 1445 or email at *emay@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Ms. May.

FOR FURTHER INFORMATION CONTACT: Ms. Elvira May, Office of Returned Volunteer Services, Peace Corps, 1111 20th Street, NW., Room 2134, Washington, DC 20526. Ms. May can be contacted by telephone at 202–692–1445 or 800–424–8580 ext 1445 or email at *emay@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Ms. May.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0531.

Title: Peace Corps Career Information Consultants Waiver Form.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by returned Peace Corps Volunteers and professionals in specific career fields. This information will be used by Returned Volunteer Services to assist returned Peace Corps Volunteers with re-entry transition issues. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Returned Volunteer Services' outreach program.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1545 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Volunteer Application form, OMB Number 0420–0005, is required under the Peace Corps Act for Volunteer recruitment purposes. This is a renewal of an active OMB Control Number. No comments were received in response to the Peace Corps' earlier **Federal Register** Notice (August 20, 2001, Volume 66, Number 161, p. 43598 for 60 days). The Peace Corps is not proposing any changes to the Peace Corps Volunteer Application form.

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580 ext. 2205 or e-mail at *ddunevant@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580 ext. 2205 or e-mail at *ddunevant@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0005.

Title: Peace Corps Volunteer Application form.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by potential Peace Corps Volunteers in order to identify prospective applicants and process the applicants for Volunteer service. This information, which is gather by paper copy and electronic on-line version, is used to determine qualifications and potential for placement of applicants into Volunteer service, in fulfillment of the first goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Volunteer process.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1546 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB Review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Volunteer Information Card, OMB Number 0420–0007, is required under the Peace Corps Act for Volunteer recruitment purposes. This is a renewal of an active OMB Control Number. No comments were received in response to the Peace Corps' earlier Federal Register Notice (August 14, 2001, Volume 66, Number 157, p. 42696 for 60 days). The Peace Corps is not proposing any changes to the Peace Corps Volunteer Information Card.

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580. ext 2205 or email at *ddunevant@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580. ext 2205 or email at *ddunevant@peacecorps.gov*. Email comments must be made in text and not in attachments.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0007.

Title: Peace Corps Volunteer Information Card.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by potential Peace Corps Volunteers in order to identify prospective applicants and process the applicants for Volunteer service. This information, which is gathered by paper copy in the form of response devices such as postage paid business reply cards, bookmarks, and reply devices that are used in directing potential applicants to the electronic on-line version of the Peace Corps application, is used to determine initial qualifications of potential for applicants. The Peace Corps needs this information in order to identify prospective applicants for Volunteer service. This information is used to provide information to interested individuals generally and in accordance with the fulfillment of the first goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Volunteer process.

This notice is issued in Washington, DC on November 9, 2001.

July Van Rest,

Associate Director for Management.

[FR Doc. 02–1547 Filed a–22–02; 8:45 am]

BILLING CODE 6051–1–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB Review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Fellows/USA Program Alumni Questionnaire form, OMB Number 0420–0525, to be used by the Peace Corps Fellows/USA Program. The information provided by the respondents is necessary for evaluating the quality of individual programs, for determining whether graduates of education programs have remained in teaching, health and/or community/economic development careers and for seeking future funding. Programmatic information will be disseminated to individual programs and portions of the data collected will be incorporated into grant proposals and reports. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Fellows/USA Program. This is a reinstatement of an OMB Control Number, with change, of a previously approved collection for which approval has expired. No comments were received in response to the Peace Corps' earlier Federal Register Notice (June 13, 2001, Volume 66, Number 114, p. 31950 for 60 days).

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Dr. Cathryn Ballou, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2101, Washington, DC 20526.

Dr. Ballou can be contacted by telephone at 202–692–1432 or 800–424–8580 ext 1432 or emailed at *cballou@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Dr. Ballou.

FOR FURTHER INFORMATION CONTACT: Dr. Cathryn Ballou, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2101, Washington, DC 20526. Dr. Ballou can be contacted by telephone at 202–692–1432 or 800–424–8580 ext 1432 or emailed at *cballou@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Dr. Ballou.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0525.

Title: Peace Corps Fellows/USA Program Alumni Questionnaire Form.

Type of Review: This is a reinstatement of an OMB Control Number, with change, of a previously approved collection for which approval has expired.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by returned Peace Corps Volunteers who have completed graduate study as part of the Peace Corps Fellows/USA Program. The information provided by the respondents is necessary for evaluating the quality of individual programs, for determining whether graduates of education programs have remained in teaching, health and/or community/economic development careers and for seeking future funding. Programmatic information will be disseminated to individual programs and portions of the data collected will be incorporated into grant proposals and reports. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Fellows/USA Program.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1548 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25365; File No. 812–12540]

Massachusetts Mutual Life Insurance Company, et al.

January 15, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") and an order of exemption pursuant to Section 17(b) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitution of Class II shares of MML Equity Index Fund ("MML Fund") for shares of Dreyfus Life and Annuity Index Fund d/b/a Dreyfus Stock Index Fund ("Dreyfus Fund") and an order to permit in-kind transactions in connection with the substitution.

APPLICANTS: Massachusetts Mutual Life Insurance Company ("MassMutual") and Massachusetts Mutual Variable Life Separate Account I (the "Separate Account").

FILING DATE: The application was filed on June 4, 2001, and amended and restated on January 11, 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 Secretary of the Commission 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 February 7, 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants c/o Jennifer B. Sheehan, Esq., Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, Massachusetts 01111–0001.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or William Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. MassMutual is a mutual life insurance company established under the laws of Massachusetts on May 14, 1851. MassMutual's home office is located in Springfield, Massachusetts. MassMutual is currently licensed to transact life, accident and health insurance business in all states, the District of Columbia, Puerto Rico, and certain provinces of Canada.

2. The Separate Account was established as a separate account under the laws of Massachusetts on July 13, 1988, pursuant to a resolution of the board of directors of MassMutual. The Separate Account is registered with the Commission as a unit investment trust under the Act (File No. 811–08075). The Separate Account is divided into various segments that fund certain variable life insurance policies issued by MassMutual. The segment affected by the application, the Large Case Variable Plus Segment, is divided into eight divisions. Only one of these divisions, the Dreyfus Index Division, is affected by the application. The Dreyfus Index Division invests in the Dreyfus Fund. The Dreyfus Fund is an underlying investment option for Large Case Variable Life Plus, which is the variable life insurance policy funded by the Large Case Variable Plus Segment of the Separate Account (the "Policy").

3. The Dreyfus Fund is a no-load, open-end management investment company. The Dreyfus Corporation ("Dreyfus") is the investment adviser to the Dreyfus Fund. Dreyfus has engaged its affiliate, Mellon Equity Associates ("Mellon"), to serve as the Dreyfus Fund's index manager. The investment objective of the Dreyfus Fund is to seek to match the total return of the Standard & Poor's 500 Composite Stock Price Index ("S&P 500"). The Dreyfus Fund generally invests in all 500 stocks in the S&P 500 in proportion to their weighting in the S&P 500.

4. The total annual fund operating expenses of the Dreyfus Fund for 2000 expressed as a percentage of average net assets were 0.26% with management fees at 0.25% and other expenses at 0.01%. The average annual total return of the Dreyfus Fund was −9.28% for the one-year period ended December 31, 2000, 11.94% for the three-year period ended December 31, 2000, 17.98% for the five-year period ended December 31, 2000, 16.97% for the ten-year period ended December 31, 2000, and 14.79% for the period from its inception on September 29, 1989 to December 31, 2000. As of March 31, 2001, the Dreyfus Fund had approximately $55,773,583.55 in assets.

5. The MML Fund, a separate series of MML Series Investment Fund, is the proposed substitute portfolio for the Dreyfus Fund. MML Series Investment Fund is a no-load open-end management investment company. The investment objective of the MML Fund is to provide investment results that correspond to the price and yield performance of publicly traded common stocks in the aggregate, as represented by the S&P 500. MassMutual serves as the investment adviser to MML Series Investment Fund pursuant to various investment management agreements with respect to each of its series. Deutsche Asset Management, Inc. ("Deutsche") serves as the sub-adviser to the MML Fund.

6. The total annual fund operating expenses of the MML Fund's Class II shares for 2000 expressed as a percentage of average net assets were 0.29% annualized with management fees at 0.10% and other expenses at 0.19%.[1] The average annual total return of the MML Fund's Class II shares was −9.43% for the one-year period ended December 31, 2000, 11.92% for the three-year period ended December 31, 2000, and 15.92% for the period from its inception on May 1, 1997 to December 31, 2000. Because Class II shares commenced operation on May 1, 2000, performance for those shares is based on the performance of Class I shares adjusted to reflect the lower expenses of Class II shares. As of March 31, 2001, the MML Fund had approximately $63,045,950.21 in assets.

7. Applicants state that both the Dreyfus Fund and the MML Fund have substantially similar investment objectives. Each seeks to achieve results that track, as closely as possible (before deduction for expenses), the returns of the S&P 500. In seeking to achieve its investment objective, each fund tries to minimize its deviation from the S&P 500 and to reduce its "tracking error." A correlation to the S&P 500 of 1.00% would mean perfect correlation. The MML Fund seeks a correlation of at least .98%, while the Dreyfus Fund seeks a correlation of at least .95%. Under Mellon's management, the Dreyfus Fund generally holds all the stocks in the S&P 500 in proportion to their index weightings. In contrast, Deutsche uses a method known as "optimization," which is a statistical sampling technique, to manage the portfolio of the MML Fund. Under an "optimization" strategy, the MML Fund may not hold

[1] MassMutual has agreed to bear the expenses (other than management and administrative fees, interest, taxes, brokerage commissions, and extraordinary expenses) of the MML Fund's Class II shares in excess of 0.19% through April 30, 2002. The expenses shown include this waiver/reimbursement. Without the waiver/reimbursement, the MML Fund's other expenses would have been 0.24% and its total annual operating expenses would have been 0.34%.

all the stocks in the S&P 500. Instead, the MML Fund first buys stocks that make up the larger portions of the S&P 500's value in roughly the same proportion as the S&P 500. In selecting the smaller company stocks, however, Deutsche tries to match the industry and risk characteristics of all the smaller companies in the S&P 500 without buying all the stocks. The MML Fund will invest at least 80% of its assets in securities of companies in the S&P 500. The MML Fund will also use derivatives, such as index futures and options, to help the MML Fund approach the returns of a fully-invested portfolio. This approach attempts to maximize the MML Fund's liquidity and returns while minimizing costs.

8. Applicants state that the proposed substitution is part of MassMutual's plan to consolidate all index funds under its management with one advisory firm with index management expertise, namely Deutsche. MassMutual believes that by placing all index fund assets with one manager, MassMutual can enhance its ability to negotiate lower overall investment sub-advisory fees, which would ultimately benefit policyowners.

9. On November 9, 2001, the Commission granted MassMutual exemptive relief from, among other provisions, Section 15(a) of the Act (the "Sub-Advisers Order"). The Sub-Advisers Order permits MassMutual, as the investment adviser, to employ or replace sub-advisers without submitting such action for the approval of shareholders of affected series. Shareholders of the MML Fund previously approved the multi-manager arrangement at the April 3, 2000 shareholders meeting.

10. Applicants propose to exercise their rights to substitute the MML Fund for the Dreyfus Fund by substituting Class II shares of the MML Fund for shares of the Dreyfus Fund. MassMutual will schedule the substitution to occur as soon as practicable following the issuance by the Commission of the order of approval requested in this application.

11. The substitution will take place at the relative net asset values determined on the date of the substitution in accordance with section 22 of the Act and Rule 22c–1 thereunder. Therefore, there will be no financial impact to any policyowner as a result of the substitution. The substitution will be effected by having the Dreyfus Index Division redeem its shares of the Dreyfus Fund at the net asset value calculated on the date of the substitution. MassMutual would use the proceeds of its redemption of shares of the Dreyfus Fund to purchase Class II shares of the MML Fund.

12. In the alternative, if Dreyfus were to determine that a cash redemption by MassMutual from the Dreyfus Fund would adversely affect the remaining Dreyfus Fund shareholders, Dreyfus may require that MassMutual redeem its interest "in-kind" by taking its proportionate share of each of the securities owned by the Dreyfus Fund. In that case, the substitution will be effected by MassMutual contributing to the MML Fund all the securities it receives from the Dreyfus Fund in exchange for an amount of Class II shares equal to the fair market value of the securities contributed. The transaction will be effected in conformity with Rule 17a–7 under the Act to the extent possible.

13. The substitution requested in this application will be described in a notice that will be mailed to policyowners along with the current prospectus for the MML Fund. The notice will describe the reasons for engaging in the substitution. In addition, the notice will inform affected policyowners that prior to the substitution and for 30 days after the substitution they will have the opportunity to reallocate their account value currently in the Dreyfus Index Division to the remaining divisions or that they may remain invested in the Dreyfus Index Division until the substitution, at which time the division's underlying shares will be substituted for shares of the MML Fund.

14. Any transfers out of the Dreyfus Fund from the date of notice until the substitution occurs and any transfers by affected policyowners out of the MML Fund from the date of substitution through the 30 day period following the substitution will not be assessed a transfer fee and will not be counted as a free transfer. After the order of approval is issued by the Commission, a second notice will be provided to all affected policyowners advising them of the pending substitution and of their ability to transfer, free of charge, to any other division or to remain invested in the Dreyfus Index Division until the substitution. Within five days after the substitution, MassMutual will send affected policyowners written confirmation that the substitution has occurred.

15. MassMutual will pay all expenses and transaction costs of the substitution, including brokerage expenses, if any; none will be borne by policyowners. Affected policyowners will not incur any fees or charges in connection with the substitution, nor will their rights or the obligations of MassMutual under the Policy be altered in any way. The substitution will not cause fees and charges under the Policy currently being paid by policyowners to be greater after the substitution than before the substitution. The substitution will have no adverse tax consequences to policyowners and will in no way alter the tax benefits to policyowners.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either the deduction of a sales load from premium payments, a sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a policy owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares of another issuer, unless the Commission approves that substitution.

3. Applicants believe that their request satisfies the standards for relief of Section 26(c), as set forth below, because:

- The substitution involves investment options with substantially similar investment objectives;
- After the substitution, affected policyowners will be invested in a fund whose actual performance has been substantially similar on a historical basis to that of the Dreyfus Fund;
- After the substitution, affected policyowners will be invested in a fund whose expenses are similar to those of the Dreyfus Fund; and
- After the substitution, affected policyowners will benefit from increased efficiency and enhanced management and oversight capabilities due to the consolidation of index management under one index manager for MassMutual and its affiliates, which

MassMutual believes will ultimately benefit policyowners by allowing MassMutual to negotiate overall lower fees.

4. The purposes, terms and conditions of the substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants believe that the MML Fund will better serve policyowner interests because its performance returns and its expenses have been, or are estimated to be, similar to those of the Dreyfus Fund and because maintaining a relationship with a single index fund manager will increase efficiency and enhance management. In addition, MassMutual believes that Deutsche, the newly appointed sub-adviser for the MML Fund, by using the "optimization" method, has a better ability to achieve closer correlation to the S&P 500 than Mellon, the Dreyfus Fund's manager, because optimization attempts to maximize liquidity and returns while minimizing costs. Although the MML Fund currently has a slightly higher expense ratio than the Dreyfus Fund, the economies of scale that can be achieved as assets are consolidated with one manager may tend to reduce the expense ratio of the MML Fund. The anticipated lower expenses and the prior performance record of MML Fund's new investment sub-adviser reinforce the Applicants' belief that the MML Fund will better serve policyowner interests. Applicants assert that the Commission has routinely approved substitutions of this type. Moreover, MassMutual has reserved the right of substitution in the Policy and disclosed this reserved right in the prospectus for the Policy.

5. MassMutual believes that a multi-manager approach for its fund offerings will serve shareholder and policyowner demands for investment variety, while preserving MassMutual's role to perform due diligence and oversight. The Sub-Advisers Order would allow MassMutual the flexibility to retain and/or change sub-advisers without incurring the significant time and costs necessary to obtain shareholder approval. The substitution is another step in establishing an overall structure that will increase MassMutual's ability to affect administration, management and oversight of the investment options underlying its products, including its variable insurance products. The purpose of the substitution is to provide policyowners with improved investment options through enhanced investment performance. The multi-manager structure will give MassMutual the means to more directly monitor the overall manner in which investment options, including the MML Fund, available through MassMutual products are managed and administered. MassMutual will have greater flexibility to react to poor performance or mismanagement by a service provider, including sub-advisers, than is currently available.

6. The substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The MML Fund has an investment objective substantially similar to that of the Dreyfus Fund and permits policyowners continuity of their investment objectives and expectations.

(b) The costs of the substitution, including any brokerage costs, will be borne by MassMutual and will not be borne by policyowners. No charges will be assessed to effect the substitution.

(c) The substitution will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any policyowner's accumulation value.

(d) The policyowners will be given notice prior to the substitution and will have an opportunity to reallocate value among other available divisions without imposing any transfer charge or limitation and without counting the transfer as one of the free transfers permitted during a policy year.

(e) Within five days after the substitution, MassMutual will send to affected policyowners written confirmation that the substitution has occurred.

(f) MassMutual has agreed to bear that portion of the annual fund operating expenses of the MML Fund's Class II shares in excess of 0.26% on an annualized basis for any fiscal quarter during the two-year period beginning on the date of the substitution. In addition, for those policyowners who are policyowners on the date of the substitution, MassMutual will not increase Separate Account or Policy expenses for a two-year period beginning on the date of the substitution.

(g) The substitution will in no way alter the insurance benefits to policyowners or the contractual obligations of MassMutual.

(h) The substitution will have no adverse tax consequences to policyowners and will in no way alter the tax benefits to policyowners.

7. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

8. The substitution may involve a transfer of portfolio securities by the Dreyfus Fund to the Separate Account. Immediately thereafter, the Separate Account would purchase shares of the MML Fund with the portfolio securities received from the Dreyfus Fund. As the Separate Account and the MML Fund could be viewed as affiliated persons of one another by virtue of being under common control as contemplated by section 2(a)(3)(C) of the Act, it is conceivable that this aspect of the substitution could be viewed as being prohibited by Section17(a). In addition, "affiliated person of another person" is defined in Section 2(a)(3)(E) as, "if such other person is an investment company, any investment adviser thereof" and in section 2(a)(3)(F) as, "if such other person is an unincorporated investment company not having a board of directors, the depositor thereof." Therefore, as the investment adviser to the MML Fund and the depositor of the Separate Account, MassMutual is an affiliate of each thereby rendering the MML Fund and the Separate Account second tier affiliates of each other.

9. Accordingly, Applicants are, to the extent necessary, also seeking relief from Section 17(a). Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application if evidence establishes that: (a) 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; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Applicants represent that the terms of the proposed transaction as described in this application are (a) reasonable and fair, including the consideration to be paid and received, and do not involve overreaching, (b) consistent with the policies of the affected registered investment

companies, and (c) consistent with the general purposes of the Act.

11. Applicants submit that the described in-kind redemption transaction is reasonable and fair. It is expected that policyowners will benefit from an in-kind redemption as proposed by virtue of the fact that the MML Fund will be able to acquire portfolio securities that are consistent with its objectives and policies without incurring (or lessening) any brokerage costs and, at the same time, the Dreyfus Fund will also save brokerage costs.

12. The transaction pursuant to which the substitution will be effected, including the possible redemption of shares of the Dreyfus Fund on an in-kind basis and the corresponding purchase of shares of the MML Fund, will be effected in conformity with section 22(c) of the Act and Rule 22c–1 thereunder. Policyowners will not incur any fees or charges as a result of the transfer of value pursuant to the substitution. Policyowners' rights and privileges and Applicants' obligations under the Policy thereunder will not be affected by the substitution. Expenses incurred in connection with the substitution, including legal, accounting, brokerage, and other expenses, will not be borne by policyowners. Policy values will remain unchanged and fully invested following the consummation of the substitution. Accordingly, policyowner interests after the substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the substitution. In each case, therefore, the consideration to be received and paid is reasonable and fair.

13. The investment objectives and policies of the MML Fund are substantially similar to the investment objectives and policies of the Dreyfus Fund. In this regard, the substitution is consistent with the findings required by section 17(b) of the Act.

14. The substitution is consistent with the general purposes of the Act as enunciated in the Findings and Declaration of Policy in section 1 of the Act. The proposed transaction does not present any of the issues or abuses that the Act is designed to prevent. Policyowners will be fully informed as to the terms of the substitution, as described above, and will have an opportunity to reallocate investments prior to and following the substitution.

15. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the substitution and an order of exemption pursuant to section 17(b) of the Act in connection with aspects of the substitution that may be deemed to be prohibited by Section 17(a), as described above. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted. Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application subject to certain conditions. Applicants represent that the proposed in-kind redemption transactions meet all of the requirements of section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

Applicants' Conclusion

Applicants assert that, for the reasons summarized above, the requested orders approving the substitution and exempting the in-kind transaction should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1572 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25366; 812–12642]

Wells Fargo Funds Trust, et al.; Notice of Application

January 15, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: The requested order would permit Wells Fargo Funds Trust ("Funds Trust") not to reconstitute its board of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo Funds Management, LLC ("Funds Management") to rely upon the safe harbor provisions of section 15(f).

APPLICANTS: Funds Trust and Funds Management.

FILING DATES: The application was filed on October 1, 2001 and amended on January 8, 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 February 11, 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, 525 Market Street, 12th Floor, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Funds Trust is an open-end management investment company registered under the Act and consists of sixty-seven series ("Funds Trust Series"). Funds Management, a wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to sixty-two of the Funds Trust Series, and will serve as investment adviser to a newly created series (the "Successor Fund"). Funds Management is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The SIFE Trust Fund ("SIFE Fund") is an open-end management investment company registered under the Act. SIFE, a privately held company, serves as investment adviser to SIFE Fund and is registered under the Advisers Act.

2. On August 24, 2001, Wells Fargo and SIFE entered into an agreement providing for the acquisition of the outstanding shares of SIFE by Wells Fargo. The transaction is anticipated to

occur on February 22, 2002, which will cause SIFE to become an indirect wholly-owned subsidiary of Wells Fargo ("Acquisition"). Following the Acquisition, the Successor Fund will acquire the assets of SIFE Fund ("Reorganization"). Applicants state that the Acquisition will result in a change in control of SIFE within the meaning of section 2(a)(9) of the Act.

3. On August 7, 2001 and August 29, 2001, the respective boards of trustees (each a "Board") of Funds Trust and SIFE Fund unanimously approved the Reorganization. The Reorganization will require approval by a majority of the outstanding shares of SIFE Fund and SIFE Fund has scheduled a special meeting of the SIFE Fund's shareholders for January 31, 2002. Proxy materials for the special meeting were mailed to shareholders on or about November 15, 2001.

4. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Reorganization, more than twenty-five percent of the Board of Funds Trust would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Funds Trust would have to reconstitute its Board to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under 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.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Funds Trust had approximately $70 billion and SIFE Fund had approximately $700 million in aggregate net assets, respectively, making SIFE Fund's assets approximately 1% of the aggregate net assets of Funds Trust.

5. Applicants state that three of the eight trustees who serve on the Board of Funds Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Funds Management. Applicants state that none of the trustees who serves on the Board of Funds Trust is an interested person of the SIFE Fund or SIFE.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust would have to alter the composition of its Board, either by asking experienced trustees to resign or by adding new trustees. Applicants further state that adding new trustees could require a shareholder vote not only of shareholders of the Successor Fund, but also the shareholders of the sixty-seven Funds Trust Series not otherwise affected by the Reorganization. Applicants state that either of these solutions would be unfair to Funds Trust shareholders in view of the amount of the assets of SIFE Fund being acquired relative to the amount of assets of Funds Trust. Applicants state that adequate safeguards will be in place to protect the interest of the former shareholders of SIFE Fund following the consummation of the Reorganization. Applicants also assert that adding a substantial number of additional non-interested trustees to the Board of Funds Trust could entail a lengthy process, which could delay and increase the cost of the Reorganization, and make the Board unwieldy.

7. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1573 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; New Energy Corporation

January 18, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of New Energy Corporation of San Diego, California. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the value of certain power generation contracts, the existence and size of certain purchase orders for solar chips, and the status of New Energy's strategic partner's relationship with the Los Angeles Department of Water and Power.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 18, 2002, through 11:59 p.m. EST, on February 1, 2002.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–1734 Filed 1–18–02; 1:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45257; File No. SR–NASD–2001–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker/Dealers

January 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act") [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on November 27, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulatiion, Inc. ("NASDR"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend Rule 3370(b)(2)(A) and the corresponding recordkeeping requirements under Rule 3370(b)(4)(B) (the "Affirmative Determination Requirements") of the NASD to require that, before accepting a short sale order from a broker/dealers that is not an NASD member ("non-member broker/dealer"), a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker/dealer or that the member can borrow the security on behalf of the non-member broker/dealer for delivery by settlement date.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

* * * * *

(b)(2) "Short Sales"

(A) Customer *non-member broker/dealer short sales*

No member or person associated with a member shall accept a "short" sale order for any customer *or non-member broker/dealer* in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or *non-member broker/dealer* or that the member can borrow the security on behalf of the customer or non-member *broker/dealer* for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities, *and proprietary orders of a non-member broker/dealer that meet one of the exceptions in subparagraph (B) below.*

* * * * *

(3) No change

(4) "Affirmative Determinations"

(A) No change

(B) To satisfy the requirement for an "affirmative determination" contained in paragraph (b)(2) above for customer, *non-member broker/dealer,* and proprietary short sales, the member or person associated with a member must keep a written record [which] *that* includes:

(i) if a customer or *non-member broker/dealer* assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's or *non-member broker/dealer's* ability to deliver them to the member within three (3) business days; or

(ii) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3370(b)(2)(A) provides that no member or person associated with a member shall accept a short sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. For purposes of Rule 3370(b)(2), the term "customer" is defined in NASD Rule 0120(g) and excludes a broker or dealer.[3]

As a result, the requirements of Rule 3370(b)(2)(A) generally would not apply directly to orders received by a member from another broker/dealer (the "originating broker/dealer"). This does not present regulatory concerns where the originating broker/dealer is also an NASD member, because, as a member, the originating broker/dealer would have an independent obligation to comply with the Affirmative Determination Requirements with respect to the order. Non-member broker/dealers, however, are not subject to NASD rules and, therefore, are not independently required to comply with the NASD's Affirmative Determination Requirements. Thus the Affirmative Determination Requirements generally do not apply to short sale orders that originate with a non-member broker/dealer and are subsequently routed to an NASD member.

NASDR believes that the failure to have uniform application of the Affirmative Determination Requirements affects the integrity of the marketplace by possibly resulting in increased fails to deliver and also creates regulatory disparity by allowing certain firms to effect short sales outside the purview of the NASD's Affirmative Determination Requirements.

To address these concerns, the proposed rule change would amend Rule 3370(b)(2)(A) to require that no member or person associated with a member shall accept a short sale order for any customer, or any non-member broker/dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker/dealer, or that the member can borrow the security on behalf of the customer or non-member broker/dealer for delivery by settlement date. In such instances, members also would be required to comply wit the corresponding recordkeeping requirements under Rule 3370(b)(4)(B).

While NASD members generally are required to make affirmative determinations for both customer and proprietary orders, there are limited exceptions for proprietary orders that are bona fide market making, bona fide fully hedged or bona fide fully arbitraged transactions.[4] Under the proposed rule change, if a member can establish and document that a proprietary order it has received from a non-member broker/dealer meets one of these exceptions, it would be in compliance with the proposed amendments to the Affirmative Determination Requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 0120(g) states that the term "customer" shall not include a broker or dealer.

[4] Rule 3370(b)(2)(B).

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that applying Affirmative Determination Requirements to short sale orders of non-member brokers/dealers will ensure the integrity of the marketplace by minimizing possible fails to deliver and eliminating regulatory disparities created when short sale orders are not conducted in compliance with the Affirmative Determination Requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASDR has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–85 and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1575 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45286; File No. SR–NASD–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through April 15, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110—2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on January 14, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and Small Cap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on January 14, 2002. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until April 15, 2002. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[8] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[11] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 14, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies or the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–07 and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1621 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(b)(6).

[11] *Id.*

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45278; File No. SR–NASD–2001–90]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc.; Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility

January 14, 2002.

On December 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), a proposed rule change, pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] relating to The Nasdaq Stock Market's proposed separation from the NASD and the establishment of the NASD Alternative Display Facility. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on January 3, 2002.[3] The comment period expires January 21, 2002. The Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.[4] Accordingly, the comment period shall be extending until January 24, 2002.[5]

Interested persons are invited to submit written data, views, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388.

[4] 15 U.S.C. 78s(b)(2).

[5] The Commission orginially had intended to provide for the full 21–day comment period. Due to delays in publication, however, the comment period was inadvertently shortened.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–90 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1622 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45284; File No. SR–Phlx–2002–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Extend a PACE Automatic Price Improvement Pilot Program

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] price improvement program ("pilot"). The pilot, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature based on decimal quoting, including a percentage of the spread between the bid and the offer. The pilot has been in effect since January 30, 2001.[6] The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general, and in particular, with Section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

[5] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–01, and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1574 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2002

AGENCY: Social Security Administration (SSA).

ACTION: Withdrawal of notice.

SUMMARY: The Social Security Administration is withdrawing the **Federal Register** notice of January 3, 2002 at 67 FR 381 that announced the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d).

This **Federal Register** notice is being withdrawn because the signature line is incorrect. The Social Security Administration published a revised notice that appears in this issue of the **Federal Register**.

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.qov.*

Dated: January 17, 2002.

Dale W. Sopper,

Acting Deputy Commissioner for Finance, Assessment and Management.

[FR Doc. 02–1724 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–02–U

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2002

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Social Security Administration is announcing that the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d), is 6.3 percent for 2002.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.qov.*

SUPPLEMENTARY INFORMATION: Section 406 of Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under either section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. For 2001, the Commissioner of Social Security determined that the assessment rate under section 206(d) of the Act would be 6.3 percent. (See 66 FR 5521, January 19, 2001).

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2002. This assessment rate was based on information compiled by a private contractor, KPMG Consultants, who where tasked by the Social Security Administration to determine the costs we incur to determine and certify fees to attorneys. We will continue to review our costs on a yearly basis.

Dated: January 17, 2002.

Dale W. Sopper,

Acting Deputy Commissioner for Finance, Assessment and Management.

[FR Doc. 02–1725 Filed 1–22–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice: 3891]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection: Form DS–3053, Statement of Consent: Issuance of a Passport to a Minor Under Age 14 (OMB Control #1405–0129)

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—Reinstatement, without change, of previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement of Consent: Issuance of a Passport to a Minor Under Age 14.

Frequency: On Occasion.

Form Number: DS–3053.

Respondents: Individuals or Households.

Estimated Number of Respondents: 1.3 million.

Average Hours Per Response: 1/12 hr. (5 minutes).

Total Estimated Burden: 108,300 hours.

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 Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–663–2460.

Dated: December 19, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 02–1667 Filed 1–22–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3892]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Form DS–82, Application for Passport by Mail (formerly DSP–82) OMB #1405–0020.

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 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—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Application for Passport by Mail.

Frequency: On occasion.

Form Number: DS–82 (formerly DSP–82).

Respondents: Individuals or Households.

Estimated Number of Respondents: 1.5 million.

Average Hours Per Response: ¼ hr. (15 minutes).

Total Estimated Burden: 375,000 hours.

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 Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC. 20522, and at 202–663–2460. 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 19, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–1668 Filed 1–22–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 2001, pages 37514–37515.

DATES: Comments must be submitted on or before February 22, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Security, Part 107.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0656.

Forms(s): NA.

Affected Public: An estimated total of 458 airport and aircraft operators.

Abstract: Provides for the safety and security and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of deadly or dangerous weapons, explosives, or incendiaries onto an aircraft.

Estimated Annual Burden Hours: An estimated 512,426 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 16, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1672 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office

of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2001, page 48899.

DATES: Comments must be submitted on or before February 22, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration

Title: Airport Noise Compatibility Planning—14 CFR Part 150.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0517.

Forms(s): NA.

Affected Public: An estimated 16 airport operators who voluntarily submit exposure maps and noise compatibility programs to the FAA for review.

Abstract: The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval. FAA approval makes airport operators' noise compatibility programs eligible for discretionary grant funds set aside under the FAA Airport Improvement Program for that purpose.

Estimated Annual Burden Hours: An estimated 50,400 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 15, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1673 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on February 15, 2002, 8:30 a.m.

ADDRESSES: The meeting will be held at the Rosen Centre Hotel, Salon 22, Orlando, FL, telephone (407) 996–9840.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 2–463; 5 U.S.C. App. II).

The agenda will include:

a. Discussion and approval of the Performance and Handling Qualities Requirements NPRM.

b. Working Group Status Reports:

- Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure
- Critical Parts

Members of the public may obtain copies of the Performance and Handling Qualities NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on 16 January 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–1674 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held February 12–14, 2002 starting at 9 a.m.

ADDRESSES: The meeting will be held at Honeywell, Inc., Business, Regional & General Aviation Systems, Mohave Conference Room, 5353 West Bell Road, Glendale, Arizona, 85308.

FOR FURTHER INFORMATION CONTACT: (1) 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;* (2) Honeywell Contact: Mike Kroeger; telephone (602) 436–4554; e-mail *mike.kroeger@honeywell.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Commission Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- February 12–14:
- Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting).
- Discuss/Review Revision Cycle for Document.
- Status Reports on Revisions to Sections 22 and 19.
- Status Report for Sections 6, 9, 10, 11, 12, 13, and 14.
- Electronic Form for Submitting Comments and Revised Sections.

• Determine Content and Schedule for DO–160E.

• Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting).

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 January 15, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–1670 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–07–C–00–COS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Airport, Submitted by the City of Colorado Springs, Colorado Springs, CO

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 PFC revenue at Colorado Springs Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary W. Green, A.A.E., Director of Aviation, at the following address: 7770 Drennan Road, Colorado Springs, Colorado 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Colorado Springs Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. 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 02–07–C–00–COS to impose and use PFC revenue at Colorado Springs Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 14, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Colorado Springs, Colorado Springs, Colorado, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 6, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2003.

Proposed charge expiration date: May 1, 2006.

Total requested for use approval: $7,566,700.

Brief description of proposed project: Construct Taxiway "C" from Taxiway "D" to Runway 12/30, Construct Vehicle Service Road, Construct Maintenance Equipment Storage Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Renton, Washington on January 14, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–1671 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Alaska Railroad

[Docket Number FRA–2001–11215]

The Alaska Railroad operates passenger service during the summer months, approximately mid-May until late September, between the cities of Talkeetna (mile post 226.7) and Hurricane (mile post 281.4), Alaska. This passenger service is provided on a "Flag Stop" basis for residence and visitors to this wilderness stretch of the railroad, for which there is no road access. The service is normally operated with a single Railway Diesel Car (RDC), manufactured by the Budd Company, that originates each morning in Talkeetna, Alaska.

The Alaska Railroad does not maintain mechanical facilities at either Talkeetna or Hurricane and there are no "Qualified Maintenance Personnel" (QMP) as required by 49 CFR §§ 238.303(c) *Exterior calendar day mechanical inspection of passenger equipment* and 238.305(b) *Interior calendar day mechanical inspection of passenger cars* at either location. The closest QMP personnel are located at Anchorage, Alaska which is 112 miles to the south, or Fairbanks, Alaska, which is 243 miles to the north.

The Alaska Railroad seeks relief from the requirements of 49 CFR 238.303(c) and 238.305(b), as they feel that to provide QMP personnel at Talkeetna or Hurricane, Alaska for the sole purpose of accomplishing the daily interior and exterior inspection for 4.5 months of the year is not reasonable. Further, the railroad stated that they provide this service in the public's interest now at a financial loss, even without the additional burden of the QMP personnel at these two locations. Additionally, they stated that it is anticipated that, if provided, the QMP personnel would only work approximately one hour per day.

The Alaska Railroad proposes that they continue their current practice of

the train crews, as "Qualified Persons," performing the required daily interior and exterior inspections as provided for by 49 CFR 238.305(d)(2). The 92-day periodic inspection of this passenger equipment is performed at their mechanical facilities in Anchorage, Alaska., as required by 49 CFR 229.23 *Periodic inspection: General.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Docket Number FRA–2001–11215) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 17, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–1636 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2002–01

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory 2002–01.

SUMMARY: The FRA is issuing Safety Advisory 2002–01 addressing the importance of clear, precise, unambiguous railroad safety procedures to ensure the safety of highway-rail grade crossing warning systems or wayside signal systems that are temporarily removed from service for purposes of testing, inspection or repair.

FOR FURTHER INFORMATION CONTACT: William Goodman, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone 202–493–6325) or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone 202–493–6061), e-mail *mark.tessler@fra.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Highway-rail grade crossing warning devices and wayside train signals are among the most important safety systems in the railroad industry for preventing train collisions and highway-rail grade crossing accidents. Despite the high-degree of reliability of these systems, failures occasionally do occur. FRA regulations (49 CFR parts 234 and 236) require that both grade crossing warning devices and wayside signals operate on the "fail safe" principle, which causes a system to revert to its safest state in the event of a failure or malfunction of a vital component of the system. In practical terms, fail safe operations means the grade crossing warning devices will activate to stop traffic or a wayside signal will stop train movement in the event of a component failure. However, under certain circumstances, particularly where human error is involved, the fail-safe features can be deactivated or circumvented, resulting in an accident. FRA has noted that several serious highway-rail grade crossing accidents and numerous false proceed signal failures have occurred in the past three years due to human error failures. While the total number of such failures is very small given the more than 60,000 active highway-rail grade crossing warning systems and approximately 86,000 track miles of railroad signal systems currently in operation on our Nation's railroad network, even a single failure of a grade crossing warning system to activate when needed or a single false-proceed train signal has the potential to result in a serious accident or loss of life.

Grade crossing activation failures are of particular concern, because crossing signals are often the primary means of warning motorists of an approaching train. Wayside railroad signals are also critically important to the safety of train movements; however, there are often redundant safety measures in place to help prevent train collisions. For example, train movements may be remotely monitored by dispatchers at centralized dispatching centers and train crews are sometimes made aware of the presence of nearby trains by monitoring railroad radio transmissions. However, these redundant safety measures are not feasible at grade crossings. It is impossible for train dispatchers or train crews to monitor the movement of motor vehicles over a highway-railroad grade crossing. Therefore, because grade crossing warning devices play an extremely important role in preventing grade crossing collisions, it is imperative that every reasonable precaution be taken to prevent crossing activation failures.

FRA recognizes that the railroad industry has long recognized the importance of having well defined safety procedures in place to ensure the safety of highway-rail grade crossing warning systems and wayside signal systems that have been temporarily removed from service for purposes of testing, inspection or repair. Most railroads have had such safety procedures in place for many years; nevertheless, FRA has been concerned that grade crossing accidents and false proceed signals continue to occur because of the failure to properly notify approaching trains that grade crossing warning devices or wayside signal systems have been temporarily removed from service or because of the failure to properly restore these safety systems back into service. Therefore, FRA believes it is time for the railroad industry to review and re-evaluate these safety procedures. Over the past three years, at least five serious grade crossing collisions were the result of crossing warning device activation failures which were caused, in part, by the failure of railroad personnel to follow appropriate safety procedures when the crossing warning devices were removed from service for repair, or before the crossing warning devices were restored to service after repairs had been made. A brief review of these accidents may help illustrate the critical importance of railroads having clear, precise, and unambiguous railroad safety procedures in place when testing, inspecting or repairing highway-rail grade crossing warning systems or wayside signal systems.

In one incident, two teenage boys were killed when the motor vehicle they were driving was struck by an approaching train at a highway-rail grade crossing where the warning devices, which consisted of gates and flashing lights, failed to activate. An investigation of this tragic accident revealed that, several hours prior to the accident, the grade crossing warning

devices had been temporarily disabled by a railroad signal maintainer for the purpose of making repairs and adjustments to the apparatus, and that the crossing warning devices were not tested to determine whether they were operating properly before the crossing was restored to service.

Another incident involved a grade crossing warning system which had been removed from service for repairs by a signal maintainer. In this instance, the signal maintainer did properly notify the railroad train dispatcher that the crossing warning devices had been temporarily deactivated and removed from service. The same dispatcher did provide proper notice to approaching trains that the grade crossing warning devices had been deactivated and that it would be necessary for the trains to provide flag protection while traversing the crossing. However, later during a change of shifts by dispatchers, the relief dispatcher was not notified that the grade crossing warning devices had been temporarily deactivated and removed from service. Consequently, the relief dispatcher did not notify a subsequent train that the grade crossing was out of service or that the train crew needed to provide flag protection before traversing the crossing. As a result, the train struck a motor vehicle at the crossing, killing the occupant.

In another grade crossing activation failure accident, railroad crossing maintenance personnel were utilizing the maintenance-of-way department's foul time and failed to follow authorized railroad safety procedures when temporarily deactivating the warning devices at a grade crossing. In this instance, a vital grade crossing warning system relay was inverted by a maintenance person and, subsequently, the maintenance-of-way department allowed a passenger train to operate through their work limits without notifying the signal personnel. Neither the train dispatcher nor the train crew were notified that the crossing warning devices had been deactivated. Consequently, a motor vehicle struck the side of a passenger train at the crossing, injuring the occupant of the motor vehicle.

Yet another example involved a railroad signal maintainer who had permission from the train dispatcher to foul the track and perform routine tests and inspections on a grade crossing warning device. During the course of inspecting the warning device, the signal maintainer applied a jumper wire to a vital warning system relay, thereby deactivating the warning device. He was subsequently called to investigate a false activation at another crossing and forgot to remove the jumper wire and restore the crossing warning device to service. He released his foul time with the train dispatcher, the warning system failed to activate for an approaching train, resulting in an accident which injured the occupant of a motor vehicle.

One last example involved a situation where a state highway department reported a false activation of a highway-rail grade crossing warning system to a railroad. The railroad's train dispatcher failed to notify train crews of the reported malfunction, which is required by Federal regulations. The railroad signal maintainer arrived at the crossing and used jumper wires to stop the warning system from falsely activating, without taking any measures to provide for the safety of highway users (i.e., notifying the dispatcher). He then proceeded to walk away from the immediate crossing area while trying to locate the cause of the false activation. A passenger train operating at 79 miles per hour traversed the crossing, hitting a motor vehicle and killing two occupants inside.

These occurrences resulted from interference with the normal functioning of the grade crossing warning systems without measures being taken to provide for the safety of highway traffic and train operations which depend on the normal functioning of such systems. FRA is very concerned about this practice and by issuing this safety advisory seeks to draw the attention of the railroad industry to this issue to reduce the likelihood of similar incidents in the future.

Failure to provide for the safety of motorists and train operations during all periods while the normal functioning of a system is interfered with is a violation of Federal rail safety regulations (See 49 CFR 234.209 and 236.4). FRA considers this requirement to be extremely significant to the safety of railroad employees, highway users, and the general public. Accordingly, when a system is completely or partially deactivated without adequate protective measures being taken, FRA will take firm enforcement action, which could include civil penalties against the companies and/or individuals responsible. However, preventing such serious failures in the first place is our primary goal, and the railroad's consistent application of proper procedures is critical in achieving that goal.

Railroads need to have clear and unambiguous procedures for temporarily removing grade crossing warning devices and wayside signal systems from service when making repairs, tests or inspections. These procedures should also help ensure that these critical safety devices are properly tested and known to be in proper working order before they are restored to service. Most railroads already have such procedures in place; however, in light of the incidents noted above, FRA believes that railroads should review existing procedures to ensure that they are adequate and should take steps to ensure that these safety procedures are followed.

FRA has reviewed some of the safety procedures for disabling grade crossing warning devices and wayside signal system that are in place on the major railroads to determine "best practices" that have been developed in the industry. We found that the most effective safety procedures include: (1) Requirements for signal employees to obtain proper authority from the train dispatcher or transportation department prior to disabling a warning or signal system; (2) documentation of the approval to disable the warning or signal system; (3) a requirement that all disabled warning systems must be properly inspected and tested to ensure proper operation before being restored to service; and (4) a procedure for the railroad maintenance personnel to verify with the train dispatcher or transportation department that the warning system has been properly tested before being restored to service.

Use of Jumper Wires

There are situations in which it may be necessary to temporarily circumvent the normal functioning of a system (i.e., crossing system or signal system maintenance, maintenance-of-way activity, defective system components not readily available for replacement, trains standing within a warning system's approach circuit for extended periods, etc.). A common method for such circumventing is by the application of jumper wires or some other means of circumventing the normal functioning of a system. This is appropriate when done in a safe manner. In such situations involving grade crossing warning systems, system credibility is maintained. For example, if maintenance-of-way work is being performed on trackage which is part of a highway-rail grade crossing warning system's train detection circuit, absent the application of jumper wires, it is highly probable that the warning system will activate, indicating to the motorist that it is not safe to cross the railroad tracks, when in fact no train is approaching the crossing. In this case, the integrity of the warning system would be compromised by the system's

conveying false information to a motorist such that in the future, the motorist would not necessarily comply with the warning system indications. Appropriate use of jumper wires, or other safe means of bypassing the system, thus prevents the incorrect warning from being displayed, and safety is maintained as long as measures are taken to provide for the safety of motorists and train operations.

Although appropriately deactivating the crossing warning devices through the application of jumpers or other means is a safe practice when combined with protection measures addressed to motorists and train operations, if warning devices are allowed to remain deactivated after maintenance work is completed and workers leave the scene, the motorist may be left with a non-functioning warning system. Similarly, if this is done in a signal system, an incorrect false proceed indication may be displayed.

Because the application of jumper wires to vital control relays is the most widely accepted method for temporarily disabling a grade crossing warning device or wayside signal system, FRA found that the most effective safety procedures also mandate that only approved jumper wires may be used to bypass vital circuits. Furthermore, these procedures require documentation regarding the number of jumper wires applied to circuits, the specific location of the wires, and the circuitry designation to which the wires are applied. Also, when planned maintenance-of-way work is to be performed which could affect the operation of a warning system, the safety procedures insist that a thorough job briefing be conducted by the employee in charge of performing the work on the grade crossing warning devices or wayside signal systems. Again, in all of these cases, testing is required to ensure the proper operation of the warning system prior to returning the warning system to service and the most effective procedures require that a record be kept of the tests that were performed.

In order to mitigate the risks inherent with the circumvention of a system, FRA believes it is important that individual railroads have standard procedures in place before interfering with the normal operation of a system.

Recommended Action

In recognition of the need to assure safety, FRA strongly recommends that:

1. Each railroad having a highway-rail grade crossing warning system or wayside signal system establish specific railroad-wide instructions for the proper temporary deactivation of these systems. These instructions should address:

(a) The manner in which the deactivation is authorized;

(b) The personnel designated to authorize deactivation;

(c) The protocols for notifying designated persons, especially personnel responsible for the movement of trains, that a warning system has been deactivated;

(d) The appropriate methods of providing for the safety of train movements while the warning devices are deactivated;

(e) The requirements necessary to perform an operational test of the pertinent system components after the signal system or crossing warning device work has been completed and prior to restoring the apparatus to service; and

(f) The protocols for documenting and notifying designated persons that the warning devices have been properly tested and restored to service.

2. Each railroad should provide regular periodic training to all affected employees to ensure their understanding of instructions for the proper temporary deactivation of grade crossing warning or wayside signal system, including proper use of jumper wires.

Issued in Washington, DC on January 16, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1638 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application for Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0089.

Form Number: ATF F 5100.24.

Abstract: ATF F 5100.24 is completed by persons intending to engage in a business involving beverage alcohol operations at a distilled spirits plant or bonded winery, or to wholesale or import beverage alcohol. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 1 hour and 45 minutes.

Estimated Total Annual Burden Hours: 2,800.

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: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1502 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0090.

Form Number: ATF F 5100.18.

Abstract: ATF F 5100.18 is completed by permittees who have changes in their operations which require a new permit to be issued or notice to be received by ATF. The permittees are businesses involving beverage alcohol operations at distilled spirits plants, bonded wineries, wholesalers and importers. The information allows ATF to identify the permittee, the changes to the permit or business operations and to determine whether the applicant qualifies for an amended basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 600.

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: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1503 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Federal Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Federal Firearms and Ammunition Excise Tax.

OMB Number: 1512–0507.

Form Number: ATF F 5300.26.

Abstract: A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges (ammunition) sold by firearms manufacturers, producers, and importers. The information on the form is necessary to establish the taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Time Per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 27,020.

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 qualilty, 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: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1504 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Gang Resistance Education and Training Funding Application.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachussetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to James Scott, Gang Resistance Education and Training, P.O. Box 50414, Washington, DC 20091, (800) 726–7070.

SUPPLEMENTARY INFORMATION:

Title: Gang Resistance Education and Training Funding Application.

OMB Number: 1512–0548.

Form Number: ATF F 6410.1.

Abstract: State and local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF, G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants' funding needed. The information will also be used to determine funding priorities and levels of funding, as required by law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 800.

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: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1505 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2002–04]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002

Correction

In notice document 02–898 beginning on page 1719 in the issue of Monday, January 14, 2002 make the following corrections:

1.On page 1720, in the first column, in the third full paragraph, in the fourth line, the e–mail address is corrected to read as follows: "*dilling@ogp.noaa.gov*".

2. On the same page, in the same column, in the same paragraph, in the seventh line, the web address is corrected to read as follows: " *http://www.ogp.noaa.gov/mpe/gcc/index/html.*".

[FR Doc. C2–898 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, 61, 63, 70, 72, 73, and 75

RIN 3150-AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV

Correction

In rule document 01–27157 beginning on page 55732 in the issue of Friday, November 2, 2001, make the following correction:

On page 55741, in the first column, in the third paragraph, and in the seventh line, "*ensp;* *ensp; A 1010^{-6}" should read "* * * A 10^{-6}".

[FR Doc. C1–27157 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-02]

Proposed Modification of Class E Airspace; Greenville, MI

Correction

In proposed rule document 02–248 beginning on page 706 in the issue of Monday, January 7, 2002, make the following correction:

§71.1 [Corrected]

On page 707, in the second column, in §71.1, in the third paragraph, the heading that reads "**AGL MI ES Greenville, MI [REVISED]**" should read "**AGL MI E5 Greenville, MI [REVISED]**".

[FR Doc. C2–248 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-03]

Proposed Modification of Class E Airspace; Lake Geneva, WI

Correction

In proposed rule document 02–1014 beginning on page 2146 in the issue of Wednesday, January 16, 2002, make the following correction:

§71.1 [Corrected]

On page 2149, in the second column, in §71.1, in the third paragraph, under the heading that reads "**AGL WI ES Lake Geneva, WI [REVISED]**" should read "**AGL WI E5 Lake Geneva, WI [REVISED]**".

[FR Doc. C2–1014 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–07]

Proposed Modification of Class E Airspace; Brainerd, MN

Correction

In proposed rule document 02–1010 beginning on page 2150 in the issue of Wednesday, January 16, 2002, make the following correction:

On page 2150, in the third column, in the last line under the heading **SUMMARY**, "Wing County Region Airport" should read, "Wing County Regional Airport".

[FR Doc. C2–1010 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–09]

Proposed Modification of Class E Airspace; Green Bay, WI

Correction

In proposed rule document 02–1009 beginning on page 2151 in the issue of Wednesday, January 16, 2002, make the following corrections:

1. On page 2151, in the third column, in the fifth line under the heading **ADDRESSES**, "01–AG–09" should read, "01–AGL–09".

§71.1 [Corrected]

2. On page 2152, in the third column, in § 71.1, in the third line under the heading **AGL WI E5 Green Bay, WI [REVISED]**, "long. 88°97′47″W" should read "long. 88°07′47″W".

[FR Doc. C2–1009 Filed 1–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Proposed Modification of Class D Airspace; Columbus, OH

Correction

In proposed rule document 02–1007 beginning on page 2156 in the issue of Wednesday, January 16, 2002, make the following corrections:

§ 71.1 [Corrected]

1. On page 2157, in column one, under the heading *Paragraph 5000 Class D airspace areas extending upward from the surface of the earth*:

a. In line one, **AFGL OH D Columbus, OH [REVISED]** should read, **AGL OH D Columbus, OH [REVISED]**.

b. In line two,"Columbus, Bolton Filed Airport, OH" should read, "Columbus, Bolton Field Airport, OH".

c. In lines four through six of the paragraph,"extending that portion beyond a 1.9 mile radius of the Bolton Field Airport bearing 290° to 325°" should read, "extending that portion beyond a 1.8 mile radius of the Bolton Field Airport bearing 270° to 325°".

[FR Doc. C2–1007 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–17]

Establishment of Class E5 Airspace, Wauchula, FL

Correction

In rule document 02–164 beginning on page 510 in the issue of Friday, January 4, 2002, make the following correction:

§71.1 [Corrected]

On page 511, in the second column, in §71.1, under the heading **ASO FL E5 Wauchula, FL [New]**, the second line, that reads "(Lat. 27°30'36" N, long. 81°52'50" W)", should read: "(Lat. 27°30'49" N, long. 81°52'50" W)"

[FR Doc. C2–164 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 516

Application Processing

Correction

In rule document 01–4996 beginning on page 12993 in the issue of Friday March 2, 2001, make the following correction:

§516.220 [Corrected]

On page 13004, in § 516.220, in the table in the third column, in item (3), "OTS will not process your to respond" should read "OTS will not process your".

[FR Doc. C1–4996 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 23, 2002

Part II

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); Proposed Rule

Office of Personnel Management
Department of Agriculture
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Social Security Administration
Office of National Drug Control Policy
Department of State
Agency for International Development
Peace Corps
Inter-American Foundation
African Development Foundation
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
    National Foundation on the Arts and the Humanities
    National Endowment for the Arts
    National Endowment for the Humanities
    Institute of Museum and Library Services
Corporation for National and Community Service
Department of Transportation

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Office of Personnel Management; Department of Agriculture; Department of Energy; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Social Security Administration; Office of National Drug Control Policy; Department of State; Agency for International Development; Peace Corps; Inter-American Foundation; African Development Foundation; Department of Labor; Federal Mediation and Conciliation Service; Department of Defense; Department of Education; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; Department of Health and Human Services; National Science Foundation; National Foundation on the Arts and the Humanities, National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services; Corporation for National and Community Service, and Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are—

First, this proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. If an agency decides that its nonprocurement activities are sufficiently vulnerable to misconduct, poor performance or abuse at levels below the first procurement, the agency may add agency-specific language to the proposed common rule to prohibit lower-tier procurement transactions with excluded persons. Agencies that do not have sufficient vulnerability at lower levels to justify the devotion of resources to enforce exclusions at lower levels need not add language to the common rule.

Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. This should help clarify an ambiguity in the current common rule created when Congress, in enacting the Federal Acquisition Streamlining Act of 1994, elected to change the terminology in the direct Federal acquisition law from "small purchase threshold" to "simplified acquisition threshold" and increased the level from $25,000 to

$100,000. The ambiguity was created because the current common rule is linked to the small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g), but states the current level to be $25,000.

Third, both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the internet, to enforce compliance with the rules.

Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the Debarment and Suspension Nonprocurement Common Rule. Moving those requirements to a separate part will allow them to appear in a more appropriate location nearer other requirements used predominately by award officials.

Finally, this document is prepared in plain language text and format to make it easier to read and use.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 2535(o)), any Department of Housing and Urban Development (HUD) proposed or interim rule that is issued for public comment is subjec to pre-publication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but will propose the common amendments in a separate rulemaking.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Comments on these proposed rules should be addressed to: Robert F. Meunier, Office of Grants and Debarment (3901–R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Comments may be submitted via e-mail (*meunier.robert@epa.gov*), but must be made in the text of the message and not as an attachment.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Debarring Official, Environmental Protection Agency, by phone at (202) 564–5399 or by e-mail (*meunier.robert@epa.gov*). Information about the Interagency Committee on Debarment and Suspension can be found on their home page (*http://www.dot.gov/ost/m60/grant/net.htm*). A chart showing where each agency has codified the common rule may be obtained by accessing the Office of Management and Budget's home page (*http://www.whitehouse.gov/omb*), under the heading "Grants Management."

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12549, "Debarment and Suspension," issued February 18, 1986 (3 CFR 1986 Comp., p. 189) authorized a governmentwide system for debarment and suspension under Federal nonprocurement activities. The Office of Management and Budget (OMB) published initial guidelines to all Executive branch agencies in 1986 and the agencies published a common rule on May 26, 1988 (53 FR 19160). The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR).

On January 31, 1989, the agencies amended the common rule by adding a new subpart F to implement the Drug-Free Workplace Act of 1988. (*See* 54 FR 4946.)

On August 16, 1989, Executive Order 12689, "Debarment and Suspension," (3 CFR 1989 Comp., p. 235) directed agencies to reconcile technical differences existing between the procurement and nonprocurement debarment systems, and to give exclusions under either system reciprocal effect across procurement and nonprocurement activities. In 1994 Congress passed the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 108 Stat. 3327) mandating reciprocity for exclusions issued under the procurement and nonprocurement debarment systems.

On April 12, 1999, OMB asked the Interagency Suspension and Debarment Committee (ISDC) to review the common rule and propose amendments that would: (a) resolve unnecessary technical differences between the procurement and nonprocurement systems; (b) revise the current rule in a plain language style and format; and (c) make other improvements to the common rule consistent with the purpose of the suspension and debarment system. The ISDC's proposed amendments form the basis of this Notice of Proposed Rulemaking.

Format of the Proposed Debarment and Suspension Common Rule

The proposed rule adopts a different approach to the structure and format of the common rule. It is formatted so that matters common to a particular class of readers, or to a particular subject, appear together. This allows readers easy access to information that may be of particular importance to them. The rule also contains tables and a chart to assist the reader in locating or clarifying information presented in the text of the rule.

The proposed rule uses fewer legal terms, and uses more commonly understood words along with shorter sentences. It also presents information in a question-and-answer format. Wherever possible, the rule uses the active voice.

Due to the new format of the proposed rule, requirements would appear in a different order than they do under the current common rule. The following table will assist you in locating and comparing the requirements under both rules.

Proposed nonprocurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
__.25	none
__.50	none
__.75	none
Subpart A:	
__.100	__.100
__.105	none
__.110	__.100, __.115
__.115	__.200
__.120	__.215
__.125	__.110(c)
__.130	__.110(c)
__.135	__.110(a)
__.140	__.210
__.145	__.105 (ineligible)
Subpart B:	
__.200	__.110(a)
__.205	__.225
__.210	__.110(a)(1)
__.215	__.110(a)(2)
__.220	__.110(a)(1)(ii)
__.225	none
Subpart C:	
__.300	__.220(b), __.225
__.305	__.220(b)
__.310	__.220
__.315	__.510
__.320	__.225
__.325	__.510
__.330	__.510, Appendix A
__.335	__.510, Appendix B
__.340	Appendix A, Appendix B
__.345	__.510(c)
__.350	__.510(c)
__.355	__.510, Appendix B
__.360	__.510(c)
Subpart D:	
__.400	__.200, __.215
__.405	__.200(a)

Proposed nonprocurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
__.410	__.200(b)
__.415	__.220
__.420	__.200(b)
__.425	__.505(d), (e)
__.430	__.505(d), (e)
__.435	__.115(a), __.510
__.440 [Reserved].	
__.445	__.225(b)
__.450	__.510 Appendix A
__.455	__.510 Appendix B
Subpart E:	
__.500	__.105, __.500
__.505	__.505, __.510
__.510	__.105, __.500
__.515	__.500
__.520	__.505
__.525	__.505(c)
__.530	none
Subpart F:	
__.600	__.311, __.410(a)
__.605	__.300, __.400
__.610	__.310, __.410
__.615	__.312, __.411
__.620	__.115
__.625	__.325, __.420
__.630	__.325, __.420
__.635	__.315
__.640	__.315
__.645	__.315
Subpart G:	
__.700	__.400(a) & (b)
__.705 (a)	__.400(c)
__.705 (b)	__.412(b)(1)(i) & __.413(a)
__.705 (c)	none
__.710	none
__.715	__.411
__.720	__.412(a)
__.725(a)	__.412(a)
__.725(b)	__.105, definition of Notice, second sentence; none
__.730	none
__.735	__.412(b), __.413(b), none
__.740(a)	__.410(b)
__.740(b)	__.412(b)
__.745	__.413(b)(1), __.412(b)(2)
__.750	__.413(b)
__.755	__.413(a) & (c)
__.760	__.415
Subpart H:	
__.800	__.305
__.805	__.312
__.810	none
__.815	__.313(a)
__.820	__.313(a); __.105, definition of Notice, none
__.825	none
__.830	__.313(b), __.314(b), none
__.835	__.310
__.840	__.313(b)
__.845	none, __.314(a) & (b)(1)
__.850	__.314(c)(1)
__.855	__.314(c)(2), none
__.860	none, See 48 CFR 9.406–1(a)
__.865	__.320(a)
__.870	__.314(a) & (d)
__.875	__.320(c)
__.880	__.320(c)
__.885	__.320(b)
Subpart I__Definitions	
__.900– __.1020	__.105

Reconciliation of Technical Differences

The proposed rule incorporates some changes that are designed to bring the procurement and nonprocurement debarment rules into greater conformity with each other. However, the ISDC recommended against issuing a single consolidated rule, or adopting uniform application of the rule as impractical and confusing. This decision was based on the ISDC's view that the procurement and nonprocurement communities have sufficiently different relationships with participants, distinct methods to procure services or to provide benefits or support, varying options for dealing with waste, fraud, abuse, and poor performance, and very different types of exposure to risk.

The ISDC therefore focused its attention on ensuring that both the procurement and nonprocurement rules contained the same level of substantive due process in: (a) Applying the same minimum criteria to suspend or propose debarment; (b) notifying respondents of actions; (c) making a record to support a decision; (d) providing for fact-finding; (e) addressing mitigating and other factors; (f) applying evidentiary standards; and (g) issuing decisions.

Section __.220 of the proposed rule would bring the common rule into closer conformity with the FAR by limiting the mandatory down-tier application of an exclusion under the common rule to the first procurement level. Unless Federal consent is required at a lower level, if an agency wishes to apply an exclusion at levels lower than the first procurement level (*e.g.*, to subcontractors or suppliers), the agency must specifically include that option in its published version of the common rule. The ISDC recommended this change because it recognizes that some agencies' nonprocurement transactions are highly vulnerable to the impact of misconduct and poor performance at levels below the first procurement, while other agencies' transactions are not. This approach allows those Federal agencies with vulnerability at lower tiers to prohibit those transactions, while providing flexibility to those agencies whose programs' exposure does not merit the additional administrative burden of enforcing exclusions at lower tiers.

In addition, the threshold level for application of an exclusion for all procurement-type transactions under a nonprocurement transaction would be set at $25,000. This corrects confusion created when the term "small purchase threshold," formerly found at 10 U.S.C. 2304(g) and 41 U.S.C. 403(11) (set at $25,000), was changed under the Federal Acquisition Streamlining Act of 1994 to "simplified acquisition threshold" and set at $100,000. Because the current common rule uses the "small purchase threshold," as the point beneath which an exclusion does not apply, it has caused confusion as to whether the exclusion level is $25,000 or $100,000. The procurement debarment system has already made regulatory changes to subpart 9.4 of the FAR to keep its exclusion level at $25,000.

In addition to "suspension" and "debarment," the common rule recognizes a status called "voluntary exclusion." Subpart 9.4 of the FAR makes no reference to such a status. The status of voluntary exclusion is a remnant from older rules and practices in the nonprocurement community that pre-date the Governmentwide suspension and debarment system. It was once used because respondents found the "voluntary" nature of the prohibition to be more acceptable. It was, in fact, a special term used for those who accepted ineligibility pursuant to an administrative agreement. The ISDC found that there are benefits to the nonprocurement community in retaining the ability of Federal agencies to accept voluntary exclusion agreements in place of debarment or suspension. However, with the creation of the Governmentwide system, voluntary exclusion agreements that offer protection only to the agency initiating action in the matter, are inconsistent with the purposes of the Governmentwide system. Accordingly, under the proposed rule agencies may still negotiate voluntary exclusion agreements; however, those exclusions must apply equally to all Federal agencies.

Section __.860 of the proposed rule is new to the common rule. This section identifies factors that a debarring official may regard as mitigating or aggravating factors. It includes factors that currently appear under § 9.406–1(a) of the FAR. These factors currently offer useful guidance to the Government and contractors with respect to matters the

debarring official should consider in making a debarment decision.

Enhancements to the Proposed Debarment and Suspension Common Rule

This proposed rule would make several modifications to the existing common rule to enhance the effectiveness of, cure some gaps in, or clarify requirements and processes under the existing rule. None of these changes are intended to alter the fundamental principles inherent to debarment and suspension actions. All information related to the purposes and procedures applicable to the current rule as reflected in its preambles at 53 FR 19160–19171 (May 26, 1988), and 60 FR 33036–33040 (June 26, 1995), shall continue to apply under this proposed and/or any final rule unless otherwise stated, or inconsistent with these provisions. Therefore, notwithstanding the technical existence of any cause for debarment, affiliation, imputable conduct, or other actionable condition, debarment or suspension may not be used to punish. Nor may it be used to coerce a respondent into accepting criminal, civil or administrative sanctions. An agency may address its legitimate suspension and debarment concerns before, after or in conjunction with sanctions, so long as suspension or debarment is otherwise appropriate to protect the Federal Government. In all cases, suspending and debarring officials must use business judgment and discretion in electing to use the suspension and debarment authority under this rule to protect government activities from potential waste, fraud, abuse, poor performance and non-compliance with applicable laws, regulations or conditions related to nonprocurement transactions. Where an agency has the authority to act under either the procurement or nonprocurement rule, it may act under either rule to avoid confusion or duplication.

The proposed rule would move definitions from Subpart A of the current rule to Subpart I. Under the proposed rule, a new term is used to refer to ineligibility that arises from sources other than discretionary actions taken under either the common rule or subpart 9.4 of the FAR. This type of ineligibility may arise by operation of a statute, executive order, or other directive and may not be subject to the discretion of the agency suspending or debarring official. In addition, it may have special attributes that are inconsistent with the discretionary actions initiated under the common rule or the FAR. For example, persons convicted under the Clean Air Act or Clean Water Act are automatically ineligible for procurement and nonprocurement participation at the violating facility which gave rise to the conviction until the EPA Debarring Official certifies that the conditions giving rise to the conviction have been corrected. The proposed rule refers to these and other special forms of ineligibility as "disqualifications." Disqualifications must be listed on the General Services Administration (GSA), *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs* (List), but are not subject to the uniform procedural requirements of this rule. (Note that agencies with special provisions related to disqualification may, at their option, include those requirements in subpart J or other subparts appended to this rule as a convenience to the agency or the public.) For discretionary actions that result in ineligibility under the uniform suspension and debarment procedures covered by the common rule and the FAR, this proposed rule uses the term "exclusion." Therefore, an ineligibility may result from either a disqualification or an exclusion.

The proposed rule adds a new definition for "agent or representative" as is used under the FAR and clarifies the definition of "participant." It also proposes a more useful definition of the types of activities that are encompassed within the term "principal."

The term "voluntary exclusion" is narrowed under this proposed rule to conform to the principles of governmentwide protection and give it the same scope of coverage as other exclusions.

One significant change to the definitions under the proposed common rule relates to the term "conviction." Previously, the common rule defined conviction as a judgment that had to be "entered" by the court before it was recognized as constituting a ground for suspension or debarment. In recent years, courts have used many vehicles to conclude criminal matters short of "entry" of a judgment of conviction, such as probation before judgment, pre-trial diversion, and simply withholding final judgment upon satisfaction of certain conditions in lieu of incarceration or payment of a fine. Currently, the withholding of entry of the judgment in a criminal matter often means that a respondent remains under a temporary suspension until criminal proceedings are concluded. This does not benefit either the government or the respondent because the government is unable to conclude the matter by final decision or with a compliance agreement with any certainty that a baseline for risk assessment can be finally established. From a business point of view, the withholding of an "entry" of judgment under these conditions should not preclude Federal agencies from taking appropriate action to protect the government. It makes no sense for an agency to have to prove the underlying misconduct or conditions all over again, merely because the court decided not to "enter" its judgment. Under the proposed rule, the suspending or debarring official would be able to consider criminal matters resolved by means short of dismissal as final so that appropriate administrative action can be taken, or a remedial plan of compliance concluded. This change would benefit both the government and a respondent.

The proposed rule would significantly clarify confusion under the existing rule as to who may be suspended or debarred and the impact of that decision on a suspended or debarred person. An agency may exclude any "person" as defined in the rule that may be reasonably expected to participate in a "covered transaction" (*see* § __.135).

Even if a person is excluded, agencies could still award a covered transaction to that person when it is in the best interest of the government to do so. The proposed rule sets forth more clearly the two situations that allow an otherwise excluded person to participate in a nonprocurement transaction. The first is when an agency grants an exception to the excluded person to participate in a covered transaction (*see* § __.120). Exceptions are transaction-specific decisions that the designated agency official must justify in writing. The second situation that allows an excluded person to participate in a transaction is when an agency is entering into an exempt transaction (*see* § __.215). Exempt transactions have special status and are not regarded as covered transactions. Exempt transactions may or may not be transaction-specific, and do not require the written justification of a designated agency official before entering into them. Each agency is responsible for clarifying the applicability or non-applicability of an exemption to any of its transactions in its agency-specific rule.

Proposed § __.215 contains a new exemption that has been added at paragraph (e). This exemption is proposed because most often the transactions listed within this paragraph are regulatory vehicles that should not be automatically precluded to an otherwise excluded person. In cases

where an agency uses a "permit," "license" or other similar transaction to approve or authorize government-regulated activity, but desires to subject issuance of the transaction to the GSA List, it must do so in its regulations or other guidance.

Sections __.615, __.715 and __.805 of the proposed rule would amend the notice provisions of the existing rule. The proposed rule would authorize an agency to use facsimile and e-mail to notify a respondent of debarment or suspension actions affecting that person. The proposed modification to the existing rule would recognize the advances made in communications technology since the original rule was published and would provide a better system for confirming receipt of notices that were sent.

The current common rule identifies the two conclusions that a suspending official must make before imposing a suspension. While the current rule provides some guidance as to how a suspending official may conclude that "adequate evidence" of a cause for action may exist, it is silent as to how the official may conclude that "immediate action" is necessary to protect the public interest. The proposed rule would add information at § __.705(c) that reflects the court's decision in *Coleman American Moving Services, Inc.* v. *Weinberger,* 716 F. Supp. 1405 (M. D. Ala. 1989), that a suspending official need not make a separate and specific finding as to immediate need, but may reach that conclusion from inferences reasonably drawn from the facts and circumstances present.

Also, § __.735 of the proposed rule would authorize the suspending official to preclude fact-finding where a State attorney general's office, State or local prosecutor advises that conducting fact-finding would prejudice substantial interests of the State or local government in pending or contemplated legal proceedings based upon the same facts as the suspension. This language is necessary to close a gap in the current rule that allows a Federal agency to suspend on the basis of a Federal, State or local indictment, but only addresses denial of fact-finding in the context of advice received from Federal officials. In suspension and debarment matters, there is no distinction made between indictments issued at the Federal, state or local level. All indictments for alleged misconduct relevant to nonprocurement and procurement risks provide a basis for Federal concern. Therefore, where the prospect of an administrative fact-finding proceeding could prejudice the outcome of a matter at the state or local level, the suspending official must have the same authority to deny fact-finding to protect those proceedings as for matters based upon actions initiated at the Federal level. Accordingly, §§ __.735 and __.760 of the proposed rule would reflect equality of treatment to be given to our respective levels of government in suspension matters.

Proposed §§ __.730 and __.825 would identify information that a respondent must provide the suspending or debarring official when contesting a suspension or proposed debarment. This information is relevant to the official's decision and is frequently requested during the presentation of matters in opposition. By highlighting this requirement in the rule, a respondent can be prepared in advance to address the issue at the time of the respondent's initial written submission, or during the oral presentation if one is made. These sections of the proposed rule also clarify that a general denial of allegations contained in the notice of action is insufficient to establish a genuine dispute over a material fact. A suspending or debarring official can only determine if a respondent is entitled to a fact-finding proceeding if the respondent's submission in opposition contains enough specific information to identify the issue in question and establish a basis for dispute.

Section __.515(b) of the proposed rule includes additional information to be contained on the GSA List or within its database. Under the current rule, other than the name and address of an excluded person, there is currently insufficient information on the List or in the GSA database that can be used to confirm the identity of a listed person under a commonly used name. Confirmation requires contact with the designated Federal official by telephone or other means, a search of records if available, and confirmation in accordance with that agency's Routine Use Notice. The proposed rule would permit the database for the electronic version of the GSA List to include a field for Taxpayer Identification Numbers (TINs) and Social Security Numbers (SSNs) if legally appropriate. The List and current database contains names of individuals, business entities and organizations that can be the same or confusingly similar. The current commercial world uses TINs and SSNs widely and freely to confirm identities for all kinds of transactions.

The proposed rule would position GSA to compile that information in the event the law should allow public access to it. Otherwise, the current system will remain commercially inefficient. We specifically invite comment on the proposed inclusion of this provision in the common rule.

The proposed rule would also eliminate a requirement under the current rule that the exclusions be enforced through a chain of paper certifications submitted to an agency or between participants under a covered transaction. Certification as a means of enforcement has proven to be administratively awkward and impossible for some transactions that do not even involve an "award." Advancements in technology allow anyone with access to a personal computer to receive up-to-date information about a person's eligibility by accessing the GSA list on line. This makes the certification process largely obsolete. The proposed rule would allow agencies to employ any method of enforcement of the GSA List that is administratively and commercially feasible. This change is consistent with Congress' intent under the Federal Acquisition Reform Act of 1994 (Public Law 104–208), to eliminate unnecessary certifications.

Proposed Separate Part To Implement the Drug-Free Workplace Act

Finally, this document proposes to establish a separate part for the drug-free workplace requirements that are in subpart F of the existing rule. The only requirement of the Drug Free Workplace Act of 1988 that relates to suspension and debarment is incorporated into the causes for debarment. The remaining provisions of subpart F are used predominantly by recipients of Federal assistance awards and by Federal officials who make and administer those awards, which distinguishes them from the common rule that is used mainly by Federal suspension and debarment officials and respondents. Moving the requirements of the current subpart F into a part separate from the common rule allows each Federal agency to place it in an appropriate location within the Code of Federal Regulations where it may be more easily used by recipients and Federal awarding and administering officials.

The proposed separate part to incorporate the provisions of Subpart F, like the proposed update to the debarment and suspension common rule, is reformatted and rewritten in plain language. Due to the proposed reformatting, requirements would appear in a different order than they do in the current Subpart F. The following table will assist you in locating and comparing the requirements under both rules.

Proposed drug-free workplace common rule sections	Current drug-free workplace common rule sections
.100	.600(a)
.105(a)(1)	.610(a)
.105(a)(2)	none
.105(b)	none
.110	.610(b)
.115	.600(b)
.200	.630(a)(1)
.200(a)	certification alt I. A. (g)
.200(b)	certification alt I. B.
.205(a)	certification alt I. A. (a)
.205(b)	certification alt I. A. (a)
.205(c)	certification alt I. A. (d)
.210	certification alt I. A. (c)
.215	certification alt I. A. (b)
.220	.630 (e)
.225(a)	.635 (a)(1)
.225(a)	certification alt I. A. (e)
.225(b)	.635(a)(2)
.225(b)	certification alt I. A. (f)
.230(a)	appendix C. 5
.230(b)	Appendix C. 6
.230(c)	Appendix C. 7
.300	.630(a)(1)
.300	certification alt II.
.300(b)	.635(b)
.400(a)	none
.400(b)	none
.500	.615(b)
.505	.615(c)
.510	.620(a)
.510	
.515	.625
.605	.605(b)(7)
.610	.605(b)(1)
.615	.605(b)(2)
.620	none
.625	.605(b)(3)
.630	D&S common rule
.635	.605(b)(4)
.640	.605(b)(5)
.645	.605(b)(6)
.650	none
.655	.605(b)(9)
.660	.605(b)(8)
.665	.605(b)(10)
.670	D&S common rule
	.600(a)(1)
	.600(a)(2)
	.610(c)
	.615(a)
D&S common rule	.620(b)
	.630(a)(2)
	.630(b)
	.630(c)
	.630(d)
	Appendix C. 1
	Appendix C. 3
	Appendix C. 4
	Appendix C. 8

The proposed separate part would make one substantive change to the current subpart F. The proposed substantive change would require Federal agencies to obtain recipients' assurances of compliance with drug-free workplace requirements and not require them to obtain certifications from recipients. This substantive change implements section 809 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, 111 Stat. 1838–1839) that amended the Drug-Free Workplace Act of 1988. The body of the proposed separate part therefore includes the substantive requirements for recipients that now are in the text of the drug-free workplace certification in appendix C to the common rule.

The proposed separate part also would make some definitional changes to the current subpart F. First, it includes a definition of "debarment," since it no longer would be a subpart within the common rule that relies on the definitions in that part. Second, the proposed separate part uses the term "award," rather than the term "grant," to include the grants, cooperative agreements, and other assistance instruments covered by the drug-free workplace requirements. The term "grant" then is proposed to be redefined to bring it into conformance with the use of that term established by the Federal Grant and Cooperative Agreement Act (currently at 31 U.S.C. chapter 63). Doing so should help avoid confusion about the applicability of the drug-free workplace requirements to assistance instruments other than grants. To accommodate the change to the term "award," the proposed separate part includes a definition for the term "cooperative agreement" and uses the term "recipient," rather than "grantee."

Impact Analysis—Executive Order 12866

This is not a significant regulatory action under section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this proposed rule, if published as a final rule, would not have a significant impact on a substantial number of small entities. This proposed rule addresses Federal agency procedures for suspension and debarment. It clarifies current requirements under the Nonprocurement Common Rule for Debarment and Suspension by reorganizing information and presenting that information in a plain language, question-and-answer format.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Public Law 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in an annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. Since this proposed rule, if published as a final rule, would not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

D. Paperwork Reduction Act

The participating agencies certify that this proposed rule, if published as a final rule, would not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). This proposed rule, if published as a final rule, would not: Result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Executive Order 13132: Federalism

This proposed rule, if published as a final rule, would 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, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Text of the Proposed Common Rules

The text of the proposed common rules appear below:

1. [Part/Subpart] __ is revised to read as follows:

[PART/SUBPART] __ GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p .235.

§ __.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart ...	You will find provisions related to ...
A	general information about this rule.
B	the types of [Agency adjective] transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of [Agency adjective] officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for the *List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs* (Published by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are ...	see subpart(s) ...
(1) a participant or principal in a nonprocurement transaction.	A, B, C and I.
(2) a respondent in a suspension action.	A, B, F, G and I.
(3) a respondent in a debarment action.	A, B, F, H and I.
(4) a suspending official.	A, B, E, F, G and I.
(5) a debarring official.	A, B, D, F, H and I.
(6) a(n) [Agency adjective] official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved ..	J.

§ __.50 How is this part written?

(a) This part uses a "plain language" format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed. The pronoun "we" always is the [Agency noun].

(c) The "Covered Transactions" chart in the appendix to this part shows the levels or "tiers" at which the [Agency noun] enforces an exclusion under this part.

§ __.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion* or *excluded,* which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification* or *disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility* or *ineligible,* which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ __.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for [Agency adjective] nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority.

This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ __.105 Does this part apply to me?

Portions of this part (see table at § __.25(b)) apply to you if you are a(n):

(a) Participant or principal in a covered transaction;

(b) Respondent (a person against whom the [Agency noun] has initiated a debarment or suspension action);

(c) [Agency adjective] debarring or suspending official; or

(d) [Agency adjective] official who is authorized to enter into covered transactions with non-Federal parties.

§ __.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ __.115 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ __.120, __.315, and __.420, a person who is excluded by the [Agency noun] or any other Federal agency may not:

(a) Be a participant in a(n) [Agency adjective] transaction that is a covered transaction under Subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ __.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The [Agency head or designee] may grant an exception permitting an excluded person to participate in a particular covered transaction. If the [Agency head or designee] grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

§ __.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ __.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ __.135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has participated, is currently participating, or may reasonably be expected to participate in a covered transaction.

§ __.140 How do I know if a person is excluded?

Check the Governmentwide *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *List* and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency sends information about the excluded person to the GSA for inclusion on the *List*.

§ __.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion on the *List*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) [Agency adjective] transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ __.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ __.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § __.305 or § __.415; or

(2) A(n) [Agency adjective] official obtains an exception from the [Agency head or designee] to allow you to be

involved in the transaction, as permitted under § _.120.

§ __.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § __.970, are covered transactions unless listed in § __.215. (See appendix to this part.)

§ __.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the [Agency noun] needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the [Agency noun] specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ __.220 Are any procurement contracts included as covered transactions?

Covered transactions under this part do not include any procurement contracts awarded directly by a Federal agency (those transactions are covered under the Federal Acquisition Regulation), but they do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part). Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(a) The contract is awarded by a participant in a nonprocurement transaction that is covered under § __.210, and the amount of the contract is expected to equal or exceed $25,000.

(b) The contract requires the consent of a(n) [Agency adjective] official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(c) The contract is for federally-required audit services.

§ __.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

§ __.300 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the [Agency noun] grants an exception under § __.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ __.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the [Agency noun] grants an exception under § __.120.

§ __.310 May I use the services of an excluded person under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the [Agency noun] grants an exception under § __.120.

§ __.315 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any principal of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the governmentwide *List*.

§ __.320 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ __.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § __.430 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ __.330 What information must I provide before entering into a covered transaction with the [Agency noun]?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the [Agency

adjective] office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § __.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses listed in § __.800(a); or

(d) Have had one or more public transactions (Federal, state, or local) terminated within the preceding three years for cause or default.

§ __.335 If I disclose unfavorable information required under § __.330, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § __.330 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ __.340 What happens if I fail to disclose information required under § __.330?

If we later determine that you failed to disclose information under § __.330 that you knew at the time you entered into the covered transaction, we may

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.345 What must I do if I learn of information required under § __.330 after entering into a covered transaction with the [Agency noun]?

At any time after you enter into a covered transaction, you must give immediate written notice to the [Agency adjective] office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § __.330; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.330.

Disclosing Information—Lower Tier Participants

§ __.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ __.355 What happens if I fail to disclose information required under § __.350?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ __.360 What must I do if I learn of information required under § __.350 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § __.350; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.350.

Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions

§ __.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § __.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § __.120.

§ __.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § __.120.

§ __.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § __.120.

§ __.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § __.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ __.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the governmentwide List when you take any action listed in § __.425.

(b) You must review information that a participant gives you, as required by § __.330, about its status or the status of the principals of a transaction.

§ __.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ __.440 [Reserved]

§ __.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration.

You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ __.450 What action may I take if a primary tier participant fails to disclose the information required under § __.330?

If you as an agency official determine that a participant failed to disclose information, as required by § __.330, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.455 What may I do if a lower tier participant fails to disclose the information required under § __.350 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § __.350, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

§ __.500 What is the purpose of the List?

The *List* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ __.505 Who uses the List?

(a) Federal agency officials use the *List* to determine whether to enter into a transaction with a person, as required under § __.410.

(b) Participants also may, but are not required to, use the *List* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § __.315; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *List* is available to the general public.

§ __.510 Who maintains the List?

In accordance with the OMB guidelines, the General Services Administration (GSA) compiles, maintains and distributes the *List*.

§ __.515 What specific information is on the List?

(a) At a minimum, the *List* indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Contractor and Government Establishment (CAGE) code or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the electronic version of the *List* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) GSA discloses the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552a.

§ __.520 Who gives the GSA the information that it puts on the List?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must provide current information about those persons to the GSA. They must give the GSA—

(a) Information required by § __.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person within five working days, unless the GSA agrees to an alternative schedule, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ __.525 Whom do I ask if I have questions about a specific person on the List?

If you have questions about a listed person, ask the Federal agency that took the action placing the person's name on the *List*.

§ __.530 Where can I get the List?

You can get the information contained on the *List* in two ways.

(a) You may subscribe to a printed version which you may obtain by purchasing a yearly subscription. A Federal agency may subscribe through its printing and distribution office. The public may obtain a subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

(b) You may access the *List* through the Internet, currently at http://epls.arnet.gov.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ __.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

§ __.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	
(1) Have *adequate evidence* that there may be a cause for debarment of an individual or business; and.	Must conclude, based on a *preponderance of the evidence,* that the individual or business has engaged in conduct that warrants debarment.
(2) Conclude that there is an *immediate need* to take action to protect the Federal interest.	
(c) Usually imposes the suspension *first,* and promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ __.610 What procedures does the [Agency noun] use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and Subpart H of this part.

§ __.615 How does the [Agency noun] notify a person of suspension and debarment actions?

The suspending or debarring official sends a written notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, facsimile number, or e-mail address. The notice is effective if sent to any of these persons.

§ __.625 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ __.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ __.630 May the [Agency noun] impute conduct of one person to another?

For purposes of determining the scope of your suspension or debarment, we may impute conduct as follows:

(a) *Conduct imputed to participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval or acquiescence. The participant's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of a participant to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* We may impute the fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement, or with the knowledge, approval, or acquiescence of those participants. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

Settlement and Voluntary Exclusion

§ __.635 May the [Agency noun] settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interests of the Federal Government.

§ __.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ __.645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?

(a) Yes, we send information regarding a voluntary exclusion to the General

Services Administration for entry into the *List.*

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ __.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists adequate evidence to suspect that a cause for debarment under § __.800 may exist; and

(b) Immediate action is necessary to protect the public interest.

§ __.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ __.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ __.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § __.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ __.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension.

You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ __.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

§ __.745 Is a record made of fact-finding proceedings?

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.755 When will I know whether the suspension is continued or terminated?

(a) Where no additional fact-finding is conducted, the suspending official must make the decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official may extend that period for good cause. If fact-finding is conducted, the suspending official must make the final decision as promptly as possible after the record is closed.

(b) In any event, the suspending official must prepare a written final decision and notify you of the decision and the reasons for it. (*See* § __.615.)

§ __.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph

(b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ __.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § __.120 or § __.305;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § _.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ __.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § __.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § __.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § __.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ __.810 When does a debarment take effect?

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ __.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but

any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § __.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ __.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

§ __.840 Is a record made of fact-finding proceedings?

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § __.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § __.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ __.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ __.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that

you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ __.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § __.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ __.870 When do I know if the debarring official debars me?

(a) Where no additional fact-finding is conducted, the debarring official must make the decision whether to debar you within 45 days of closing the official record. The debarring official may extend that period for good cause. If fact-finding is conducted, the debarring official must make the final decision as promptly as possible after the record is closed.

(b) The debarring official sends you written notice, pursuant to § __.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ __.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ __.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A *bona fide* change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ __.885 May the debarring official extend a debarment period?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ __.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ __.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ __.910 Agency.

Agency means any United States executive department, military

department, defense agency, or any other agency of the executive branch. The independent regulatory agencies are not considered "agencies" for purposes of this part.

§ __.915 Agent or representative.

Agent or *representative* means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

§ __.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ __.925 Conviction.

Conviction means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere, or any other resolution, including probation before judgment and deferred prosecution.

§ __.930 Debarment.

Debarment means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ __.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ __.945 Excluded or exclusion.

Excluded or *exclusion* means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ __.950 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ __.955 Ineligible or ineligibility.

Ineligible or *ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ __.960 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ __.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.

List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List) means the list compiled, maintained, and distributed by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

§ __.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

(1) Grants.

(2) Cooperative agreements.

(3) Scholarships.

(4) Fellowships.

(5) Contracts of assistance.

(6) Loans.

(7) Loan guarantees.

(8) Subsidies.

(9) Insurances.

(10) Payments for specified uses.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ __.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § __.615.)

§ __.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ __.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ __.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ __.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of influencing the development or outcome of an activity that affects a covered transaction.

§ __.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ __.1005 State.

(a) *State* means—

(1) Any of the States of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a *State*.

(b) For purposes of this part, *State* does not include institutions of higher

education, hospitals, or units of local government.

§ __.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ __.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

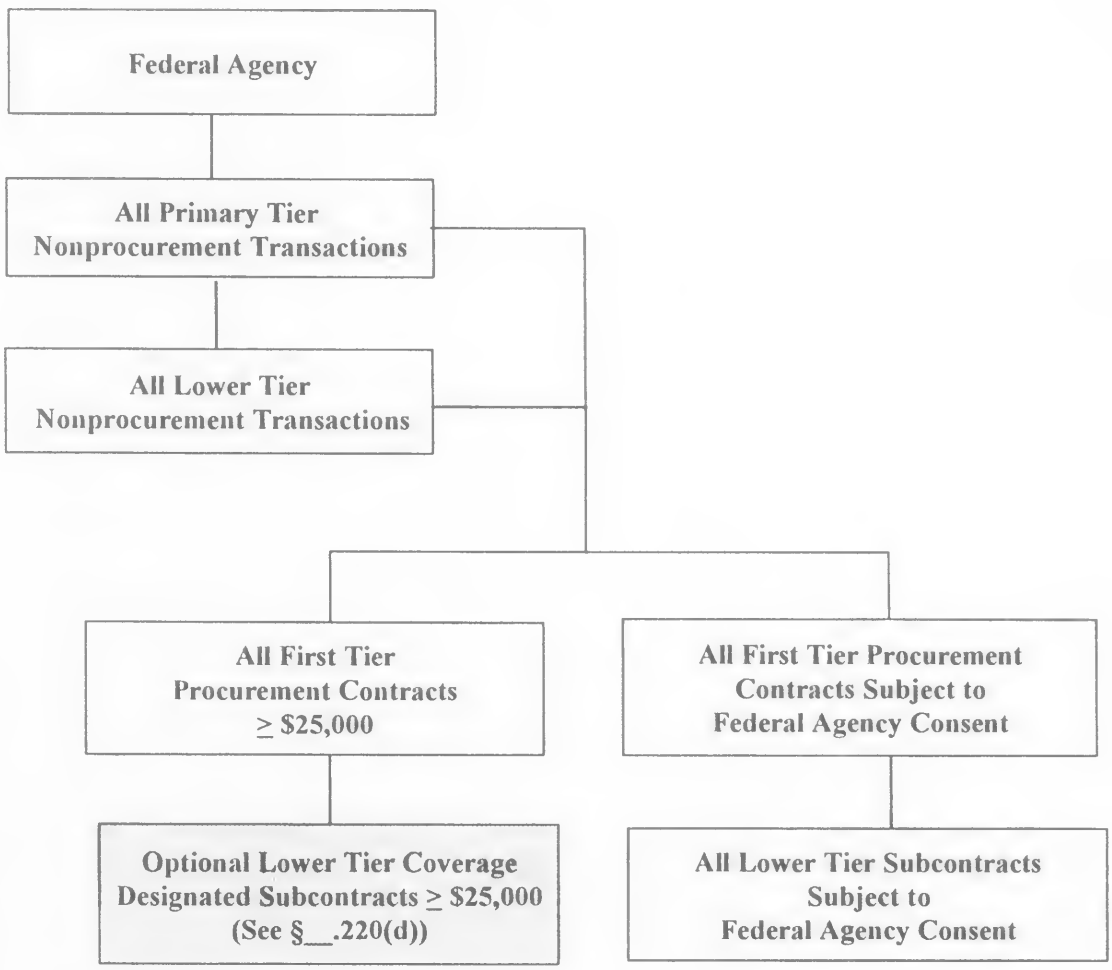
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

BILLING CODES 6325–01–P et al.

Subpart J - [Reserved]

Appendix to [Part/Subpart] ___ – Covered Transactions

COVERED TRANSACTIONS



2. [Part/Subpart] __ is added to read as follows:

[Part/Subpart] __—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

Subpart A—Purpose and Coverage

Sec.

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

Subpart E—Violations of this Part and Consequences

Subpart F—Definitions

Subpart A—Purpose and Coverage

§ __.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ __.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either

(1) A recipient of an assistance award from the [Agency noun]; or

(2) A(n) [Agency adjective] awarding official. (*See* definitions of *award* and *recipient* in §§ __.605 and __.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are ...	see subparts ...
(1) a recipient who is *not* an individual.	A, B and E.
(2) a recipient who is an individual.	A, C and E.
(3) a(n) [Agency adjective] awarding official.	A, D and E.

§ __.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the [Agency head or designee] determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ __.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § __.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ __.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail is subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ __.205 through __.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § __.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § __.230).

§ __.205 What must I include in my drug-free workplace statement?

You must publish a statement that

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ __.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § __.205 be given to each employee who will be engaged in the performance of any Federal award.

§ __.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ __.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as

described in § __.205 and an ongoing awareness program as described in § __.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) the performance period of the award is less than 30 days.	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more.	must have the policy statement and program in place within 30 days after award.
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the [Agency adjective] awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ __.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § __.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ __.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each [Agency adjective] award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the [Agency adjective] official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by [Agency adjective] officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place.

Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the [Agency adjective] awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the [Agency adjective] awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ __.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) [Agency adjective] award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the [Agency adjective] awarding official or other designee for each award that you currently have, unless § _.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ __.301 [Reserved]

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

§ __.400 What are my responsibilities as a(n) [Agency adjective] awarding official?

As a(n) [Agency adjective] awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ __.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of Subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ __.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of Subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ __.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § __.500 or § __.505, the [Agency noun] may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under [CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689], for a period not to exceed five years.

§ __.515 Are there any provision for exceptions to those actions?

The [Agency head] may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the [Agency head] determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ __.605 Award.

Award means an award of financial assistance by the [Agency noun] or other Federal agency directly to a recipient.

(a) The term *award* includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term *award* does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ __.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ __.615 Conviction.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ __.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (*see* definition of *grant* in § __.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include *cooperative research and development agreements* as defined in 15 U.S.C. 3710a.

§ __.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ __.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ __.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ __.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ __.645 Federal agency or agency.

Federal agency or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ __.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ __.655 Individual.

Individual means a natural person.

§ __.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ __.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ __.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient

is a distinct and separate action from suspension of an award or suspension of payments under an award.

Adoption of Proposed Common Rules

The adoption of the proposed common rules by the participating agencies, as modified by agency-specific text is set forth below:

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AJ31

FOR FURTHER INFORMATION CONTACT: J. David Cope, Debarring Official, Office of the Inspector General, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, e-mail *debar@opm.gov*, fax (202) 606–2153.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Office of Personnel Management adopted the Nonprocurement Debarment and Suspension Common Rule on May 17, 1993, following the text of the governmentwide rule as published on May 26, 1988 (53 FR 19160). OPM did not adopt subpart F of the common rule, pertaining to requirements for drug-free workplace (grants), because the agency did not issue assistance awards, grants, or other forms of financial or nonfinancial assistance that would be covered by those provisions. For the same reasons, OPM is not adopting the separate regulatory part on drug-free workplace requirements that has been developed as part of this governmentwide regulatory package.

List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Government employees, Grant programs, Loan programs, Hostages, Iraq, Kuwait, Lebanon.

Approved: Office of Personnel Management.

Kay Cole James,

Director.

For the reasons stated in the common preamble, the Office of Personnel Management proposes to amend part 970 of title 5, Code of Federal Regulations as follows:

1. Part 970 is revised as set forth in instruction 1 at the end of the common preamble.:

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 970 is further amended as set forth below.

a. "[Agency noun]" is removed and "OPM" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "OPM" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Debarring Official" is added in its place wherever it occurs.

3. Section 970.440 is added to read as follows:

§ 970.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3017 and 3021

RIN 0505–AA11

ADDRESSES: Comments on the Department of Agriculture's additional provisions should be addressed to Patricia E. Healy, Acting Chief Financial Officer, U.S. Department of Agriculture, Room 143–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gerald Miske, Fiscal Policy Division, Office of the Chief Financial Officer, 202–720–1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Agriculture (USDA) is publishing these proposed rules in order to update these two regulations, and to maintain governmentwide uniformity in grants management policy that is a primary objective of Pub. L. 106–107, "The Federal Financial Assistance Management Improvement Act of 1999."

The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a separate part 3021.

The appendix that is referenced in § 3017.50 contains a model for covered transactions that would be accurate for all USDA agencies if USDA had not added certain exclusions in §§ 3017.215 and 3017.220. Therefore, it is necessary to clarify that the appendix contains a general model that will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

USDA has limited covered transactions under its current debarment and suspension regulation (7 CFR part 3017) to primary tier transactions for all of its export and foreign assistance programs. USDA proposes to retain this limited coverage for most of its export and foreign assistance programs but to expand the coverage slightly for certain market development and foreign assistance programs. The coverage would be expanded to include: (1) Any lower tiers non procurement transaction between a nonprofit trade association or state regional group and a U.S. entity under the Market Excess Program; and (2) any procurement contract for ocean transportation under USDA's foreign assistance programs. The types of lower

tier transactions that would be covered would be those in which the Department of Agriculture would be making an identifiable payment, directly or indirectly, to the participant in the specific lower tier transaction. In accordance with §§ 3017.215 (i) and 3017.220 (d), these two types of transactions would be the only lower tier nonprocurement or procurement transactions in USDA's export and foreign assistance programs that would be covered transactions under this regulation.

USDA has identified in § 3017.215 certain nonprocurement transactions that will not be covered by this regulation.

Under § 3017.220, USDA has included certain procurement contracts as covered transactions when the contract is for the procurement of ocean transportation in connection with USDA's export and foreign assistance programs.

In order to communicate requirements to lower-tier covered transactions, USDA has added § 3017.440 requiring USDA agencies to include a term in each agreement for participants' compliance with Subpart C.

In §§ 3017.755 (a) and 3017.870 (a) USDA has added the requirement that the record remain open for a full 30 days after the respondent receives the notice of suspension or debarment even if a submission in opposition is made before the 30 days expire. This requirement was included in order to make the timing of these actions clear.

USDA does not have a centralized appeal process and therefore has retained in § 3017.765 the appeal process established in the current USDA regulation on debarment.

List of Subjects

7 CFR Part 3017

Administrative practice and procedure, Debarment and suspension, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 3021

Administrative practice and procedure, Drug abuse, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

Dated: June 1, 2001.

Patricia E. Healy,

Acting, Chief Financial Officer.

Dated: June 6, 2001.

Ann M. Veneman,

Secretary of Agriculture.

For the reasons stated in the common preamble, the United States Department of Agriculture proposes to amend 7 CFR Chapter XXX as follows:

1. Part 3017 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); 7 CFR part 2, subpart D, § 2.28.

2. Part 3017 is further amended as set forth below:

a. "[Agency noun]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "the Secretary of Agriculture or designee" is added in its place wherever it occurs.

3. Section 3017.50 is further amended by adding a sentence to the end of paragraph (c) to read as follows:

§ 3017.50 How is this part written?

(c) * * * The "Covered Transactions" chart in the appendix to this part shows the general model for the levels or "tiers" at which the Department of Agriculture enforces an exclusion under this part. However, the chart in the appendix shows only the general model and the model will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

4. Section 3017.215 is further amended by adding paragraphs (h) through (p) to read as follows:

§ 3017.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) An entitlement or mandatory award required by a statue, including a lower tier entitlement or mandatory award that is required by a statute.

(i) With respect to the Department of Agriculture's export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the

Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

(j) Any transaction under the Department of Agriculture's conservation programs, warehouse licensing programs, or programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities.

(k) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The "Export Act"), which provides separate statutory authority to debar.

(l) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(m) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(n) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(o) The receipt of licenses, permit, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(p) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

5. Section 3017.220 is amended by adding paragraph (d) to read as follows:

§ 3017.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is for the procurement of ocean transportation in connection with the Department of Agriculture's foreign assistance programs. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, not withstanding the provisions in paragraphs (a) through (c) of this section.

6. Section 3017.440 is added to read as follows:

§ 3017.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include similar term or condition in lower-tier covered transactions.

7. Section 3017.755 is further amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 3017.755 When will I know whether the suspension is continued or terminated?

(a) * * * However, the record will remain open for the full 30 days, as called for in § 3017.725, even when you make a submission before the 30 days expire.

* * * * *

8. Section 3017.765 is added to subpart G to read as follows:

§ 3017.765 How may I appeal my suspension?

(a) An appeal may be filled only after the respondent has exhausted the option to contest the suspension in § 3017.720. The appeal must be filed within 30 days of receiving the decision required § 3017.755 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a suspending official under § 3017.700 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify, in writing, the respondent(s) and the suspending official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

9. Section 3017.800 is further amended by adding paragraph (e) to read as follows:

§ 3017.800 What are the causes of debarment?

* * * * *

(e) Notwithstanding paragraph (c) (1) of this section, within the Department of Agriculture a nonprocurement debarment by any Federal agency taken before March 1, 1989.

10. Section 3017.870 is further amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 3017.870 When do I know if the debarring official debars me?

(a) * * * However, the record will remain open for the full 30 days, as called for in § 3017.820, even when you make a submission before the 30 days expire.

* * * * *

11. Section 3017.890 is added to subpart H to read as follows:

§ 3017.890 How may I appeal my debarment?

(a) An appeal may be filed only after the respondent has exhausted the option to contest the debarment in § 3017.815. The appeal must be filed within 30 days of receiving the decision required § 3017.870 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a debarring official under § 3017.800 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing

Clerk, the appeals officer will notify, in writing, the respondent(s) and the debarring official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

12. Section 3017.935 is further amended by adding paragraph (b) to read as follows:

§ 3017.935 Debarring official.

* * * * *

(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the debarring official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a debarment.

13. Section 3017.1010 is further amended by adding paragraph (b) to read as follows:

§ 3017.1010 Suspending official.

* * * * *

(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the suspending official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a suspension.

14. Part 3021 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 3021—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Department of Agriculture Awarding Officials

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 5 U.S.C. 301; 41 U.S.C. 701, *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR Part 2, Subpart D, § 2.28.

15. Part 3021 is further amended as set forth below:

a. "[Agency noun]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "the Secretary of Agriculture or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Secretary of Agriculture" is added in its place wherever it occurs.

16. Section 3021.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "7 CFR part 3017" in its place.

17. Section 3021.605 (a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "7 CFR part 3016" in its place.

DEPARTMENT OF ENERGY

10 CFR Parts 606, 607 and 1036

RIN 1991–AB56

FOR FURTHER INFORMATION CONTACT: Cynthia G. Yee, 202–586–1140; *cynthia.yee@hq.doe.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION: The administrative practices and procedures for suspension and debarment are being removed from part 1036 and recodified in part 606. The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, part 1036, and recodified as a separate part 607.

List of Subjects

10 CFR Part 606

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

10 CFR Part 607

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

Spencer Abraham,

Secretary of Energy.

Accordingly, as set forth in the common preamble, and under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, the Department of Energy proposes to amend 10 CFR chapters II and X as follows.

1. Part 606 is added to subchapter H to read as set forth in instruction 1 at the end of the common preamble.

PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Subpart B—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

2. Part 606 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Energy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOE" is added in its place wherever it occurs. c. "[Agency head or designee]" is removed and "Director, Office of Procurement and "Assistance Management" is added in its place wherever it occurs.

3. Section 606.440 is added to read as follows:

§ 606.440 What method do I use to communicate to participants the requirement to comply with subpart C?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 606.746 is added to read as follows:

§ 606.746 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

5. Section 606.836 is added to read as follows:

§ 606.836 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

6. Section 606.910 is further amended by adding a definition for Department of Energy in alphabetical order to read as follows:

§ 606.910 Agency.

* * * * *

Department of Energy includes the National Nuclear Security Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

7. Section 606.935 is further amended by adding paragraph (b) to read as follows:

§ 606.935 Debarring official.

* * * * *

(b) The DOE debarring official is the Director, Office of Procurement and Assistance Management, DOE.

8. Section 606.936 is added to read as follows:

§ 606.936 Director, Office of Procurement and Assistance Management.

Director, Office of Procurement and Assistance Management means the Director, Office of Procurement and Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

9. Section 606.1010 is further amended by adding paragraph (b) to read as follows:

§ 606.1010 Suspending official.

* * * * *

(b) The DOE suspending official is the Director, Office of Procurement and Assistance Management, DOE.

10. Part 607 is added to subchapter H to read as set forth in instruction 2 at the end of the common preamble.

PART 607—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

11. Part 607 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Energy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOE" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Procurement and Assistance Management" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Energy" is added in its place wherever it occurs.

12. Section 607.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive order 12549 and Executive Order 12689]" and adding "10 CFR part 606" in its place.

13. Section 607.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "10 CFR Part 600" in its place.

14. Section 607.631 is added to read as follows:

§ 607.631 Director, Office of Procurement and Assistance Management.

Director, Office of Procurement and Assistance Management means the Director, Office of Procurement and

Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

15. Section 607.645 is further amended by adding the definition for Department of Energy in alphabetical order to read as follows:

§ 607.645 Federal Agency or agency.

Department of Energy includes the National Nuclear Security Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

* * * * *

PART 1036 [REMOVED]

16. Part 1036 is removed.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 145 and 147

RIN 3245–AE61

FOR FURTHER INFORMATION CONTACT: Cory Whitehead, SBA Debarring Official, Acting Assistant Administrator for Administration (5331), U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205–6630, e-mail: *cory.whitehead@sba.gov* or Michael Campilongo, Office of General Counsel, 409 Third Street, SW, Washington, DC 20416, (202) 205–6879, e-mail: *michael.campilongo@sba.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 145.220 for all contracts that equal or exceed the $25,000 award threshold under SBA nonprocurement transactions. This election maintains the SBA's present practice under the common rule.

In addition, § 145.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under SBA transactions rather than written certifications. This alternative available under the common rule is more efficient than the SBA's current certification process for prospective recipients and participants.

Sections 145.765 and 145.890 are included as additional sections under part 145 and propose to permit persons who have been suspended or debarred by the SBA Debarring Official to obtain a review of that decision on a limited basis as is currently available under SBA's existing rule. These sections propose to delegate the authority to issue a stay on a suspension or debarment decision to the reviewing official. These changes from current practice reflect a more practical approach to matters accepted for review.

Sections 145.935(b) and 145.1010(b) are added to designate the Assistant Administrator for Administration as the SBA debarring and suspending official for SBA programs other than financial assistance. For that program, the SBA debarring and suspending official will be the Assistant Administrator for Financial Assistance.

Section 145.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. SBA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

The requirements for maintaining a drug-free workplace are being removed as Subpart F in the current debarment and suspension common rule, and re-codified as a separate part 147.

List of Subjects

13 CFR Part 145

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 147

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

John Whitmore,

Acting Administrator, U.S. Small Business Administration.

For the reasons stated in the common preamble, the U.S. Small Business Administration proposes to amend 13 CFR chapter I as follows:

1. Part 145 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 5 U.S.C. 301 *et seq.*; 15 U.S.C. 631 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 145 is further amended as set forth below.

a. "[Agency noun]" is removed and the "SBA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and the "SBA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and the "SBA Debarring Official" is added in its place wherever it occurs.

3. Section 145.220 is further amended by adding a paragraph (d) to read as follows:

§ 145.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the SBA under a nonprocurement transaction

that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 145.440 is added to read as follows:

§ 145.440 What method do I use to communicate § 145.435 requirements to participants?

To communicate the requirements in § 145.435 to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 145.765 is added to subpart G to read as follows:

§ 145.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 145.755 to continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

6. Section 145.890 is added to subpart H to read as follows:

§ 145.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 145.870 to debar you after you present information in opposition to a proposed debarment under § 145.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 145.870 or paragraph (a)(1) of this section. However, OHA can reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA may, in its discretion, stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

7. Section 145.935 is further amended by adding a paragraph (b) to read as follows:

§ 145.935 Debarring official.

* * * * *

(b) For SBA, the suspending official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the suspending official means the Assistant Administrator for Administration.

8. Section 145.995 is further amended by adding a paragraph (c) to read as follows:

§ 145.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

9. Section 145.1010 is further amended by adding a paragraph (b) to read as follows:

§ 145.1010 Suspending official.

* * * * *

(b) For SBA, the debarring official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the debarring official means the Assistant Administrator for Administration.

10. Part 147 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 147—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (NONPROCUREMENT)

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of SBA Awarding Officials

Subpart E—Violations of This Part and Consequences

Authority: 41 U.S.C. 701–707.

11. Part 147 is further amended as set forth below.

a. "[Agency noun]" is removed and the "SBA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and the "SBA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and the "SBA Administrator or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and the "SBA Administrator" is added in its place wherever it occurs.

12. Section 147.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "13 CFR part 145" in its place.

13. Section 147.605(a)(2) is amended by removing "[Agency specific CFR citation]" and adding "13 CFR part 147" in its place.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1265 and 1267

RIN 2700–AC43

FOR FURTHER INFORMATION CONTACT: Diane Thompson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20456–0001, (202) 358–0514, e-mail: *diane.thompson@hq.nasa.gov.*

List of Subjects

14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

14 CFR Part 1267

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Anne Guenther,

Acting Associate Administrator for Procurement.

For the reasons stated in the common preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR chapter V as follows:

1. Part 1265 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

2. Part 1265 is further amended as set forth below.

a. "The [Agency noun]" is removed and "NASA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NASA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

3. Section 1265.440 is added to read as follows:

§ 1265.440 What method do I use to communicate the requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1267 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

5. Part 1267 is further amended as set forth below.

a. "The [Agency noun]" is removed and "NASA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NASA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

6. Section 1267.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "14 CFR part 1265" in its place.

7. Section 1267.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "14 CFR part 1273" in its place.

DEPARTMENT OF COMMERCE

15 CFR Parts 26 and 29

[Docket No. 950601145–5145–01]

RIN 0605–AA02

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Dorfman, Office of Executive Assistance Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room HCHB 6022, Washington, DC 20230. 202–482–4115, e-mail: *EDorfman@doc.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) proposes this amendment to the governmentwide common rules on debarment and suspension (nonprocurement) and requirements for drug-free workplace (financial assistance). The DoC will maintain uniform procedures that are consistent with those of other Executive Departments and Agencies. The DoC has reviewed its programs and determined that those identified at § 26.215 (d), (f) and (g) are excluded from coverage under the debarment and suspension regulations. The DoC has elected to add paragraph (d) in § 26.220 so that the coverage of § 26.220 (a) is extended to one additional tier of contracts. As specified in § 26.440, DoC will use a term or condition as a means to communicate requirements to participants.

List of Subjects

15 CFR Part 26

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 29

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 4, 2001.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management, Department of Commerce.

Accordingly, as set forth in the common preamble, 15 CFR subtitle A is proposed to be amended as follows:

1. Part 26 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 26 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Commerce" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoC" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Executive Budgeting and Assistance Management" is added in its place wherever it occurs.

3. Section 26.215 is amended as follows:

a. Add paragraph (d)(1) and add and reserve paragraph (d)(2).

b. Add paragraph (f)(1) and add and reserve paragraph (f)(2).

c. Add paragraph (g)(1) and add and reserve paragraph (g)(2).

The additions read as follows:

§ 26.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(d) * * *

(1) Fisherman's Contingency Fund

(2) [Reserved]

* * * * *

(f) * * *

(1) For purposes of the DoC this means:

(i) Export Promotion, Trade Information and Counseling, and Trade Policy.

(ii) Geodetic Surveys and Services (Specialized Services).

(iii) Fishery Products Inspection Certification.

(iv) Standard Reference Materials.

(v) Calibration, Measurement and Testing.

(vi) Critically Evaluated Data (Standard Reference Data).

(vii) Phoenix Data System.

(viii) The sale or provision of products, information, and services to the general public.

(2) [Reserved]

(g) * * *

(1) For purposes of the DoC this means:

(i) The Administration of the Antidumping and Countervailing Duty Statutes.

(ii) The Export Trading Company Act Certificate of Review Program.

(iii) Trade Adjustment Assistance Program Certification.

(iv) Foreign Trade Zones Act of 1934, as amended.

(v) Statutory Import Program.

(2) [Reserved]

4. Section 26.220 is amended to add paragraph (d) to read as follows:

§ 26.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is a subcontract awarded by a participant in a procurement transaction that is covered under paragraph (a) of this section, and the amount of the contract exceeds or is expected to exceed $25,000. This extends the coverage of paragraph (a) of this section to one additional tier of contracts, as shown in the diagram in the Appendix to this part.

5. Section 26.440 is added to read as follows:

§ 26.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

6. Section 26.970 is amended to add paragraphs (a)(12) through (a)(16) to read as follows:

§ 26.970 Nonprocurement transaction.

(a) * * *

(12) Joint Project Agreements under 15 U.S.C. 1525.

(13) Cooperative research and development agreements.

(14) Joint statistical agreements.

(15) Patent licenses under 35 U.S.C. 207.

(16) NTIS joint ventures, 15 U.S.C. 3704b.

* * * * *

7. Part 29 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 29—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who are Individuals

Subpart D—Responsibilities of DoC Awarding Officials

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*

8. Part 29 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Commerce" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoC" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Executive Budgeting and Assistance Management is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Commerce" is added in its place wherever it occurs.

9. Section 29.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "15 CFR part 26" in its place.

10. Section 29.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "15 CFR part 24" in its place.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 436 and 439

RIN 0096–AE27

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Grants Management Officer, Office of Acquisition and Grants, Grants Management Team, 1710 Gwynn Oak Ave Baltimore, MD 21207, (410) 965–9518, e-mail: phyllis.y.smith@ssa.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: Prior to March 31, 1995, SSA was an

operating component of the Department of Health and Human Services (HHS). As a result of Public Law 103–296, the Social Security Administration (SSA) became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 76 dealing with nonprocurement, debarment and suspension, and the requirements for a drug-free workplace have remained applicable to SSA. In order to implement its own set of regulations on these topics, SSA proposes to adopt the common rules on nonprocurement, debarment and suspension, and requirements for a drug-free workplace with one amendment as new parts 436 and 439 in title 20 of the Code of Federal Regulations. HHS regulations at 45 CFR part 76 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103–296. Under the proposed amendment, § 436.440 would use terms or conditions to the award transaction as a means to enforce exclusions under SSA transactions rather than written certifications. This alternative available under the common rule is more efficient than SSA's current certification process for prospective recipients and participants.

Paperwork Reduction Act

SSA will clear separately the reporting and recordkeeping requirements in proposed 20 CFR parts 436 and 439 in accordance with the requirements of 44 U.S.C. chapter 35 prior to effectuating its own rules incorporating the proposed common rule. When effective, the proposed SSA rules will not actually impose any additional reporting or recordkeeping burden on the public since SSA has been following the requirements in the HHS rules in 45 CFR part 76 that were in effect on March 31, 1995, the date SSA became an independent agency, and SSA is making no substantive changes to those requirements. However, clearance is necessary to reflect that adoption of the common rule as a final rule by SSA will transfer from HHS to SSA the authority for the reporting and recordkeeping requirements SSA has been imposing on the public under the HHS rules.

List of Subjects

20 CFR Part 436

Administrative practice and procedures, Debarment and suspension, Grant programs, and reporting and Recordkeeping requirements.

20 CFR Part 439

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and record keeping requirements.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons stated in the common preamble, we propose to amend chapter III of title 20 of the Code of Federal Regulations as follows:

1. Part 436 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 436—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 42 U.S.C. 902(a)(5); Sec. 2455. Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 436 is further amended as follows:

a. "[Agency noun]" is removed and "SSA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "SSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "SSA Debarring/Suspension Official" is added in its place wherever it occurs.

3. Section 436.440 is added to read as follows:

§ 436.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 439 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 439—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Authority: 41 U.S.C. 701 *et seq*; 42 U.S.C. 902(a)(5).

5. Part 439 is further amended as follows:

a. "[Agency noun]" is removed and "the SSA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "SSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "SSA Official or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Commissioner of SSA" is added in its place wherever it occurs.

6. Section 439.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]"and adding "20 CFR part 436" in its place.

7. Section 439.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "45 CFR part 92" in its place.

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Parts 1404 and 1405

RIN 3201–ZA02

FOR FURTHER INFORMATION CONTACT: ONDCP, Attn: Daniel R. Petersen, Washington, DC 20503, (202) 395–6745, *Daniel_R._Petersen@ondcp.eop.gov*.

List of Subjects

21 CFR Part 1404

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

21 CFR Part 1405

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Edward H. Jurith,

Acting Director.

Accordingly, as set forth in the common preamble, 21 CFR chapter III is proposed to be amended as follows.

1. Part 1404 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12689 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 21 U.S.C. 1701.

2. Part 1404 is further amended as set forth below.

a. "[Agency noun]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

3. Section 1404.440 is added to read as follows:

§ 1404.440 What method do I use to communicate to participants the requirements in § 1404.435?

You must obtain certifications from participants that they will comply with Subpart C of this part and that they will obtain similar certifications from lower-tier participants.

4. Part 1405 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1405—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 21 U.S.C. 1701; 41 U.S.C. 701, *et seq.*

5. Part 1405 is further amended as set forth below.

a. "[Agency noun]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

6. Section 1405.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "21 CFR part 1404" in its place.

7. Section 1405.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "21 CFR part 1403" in its place.

DEPARTMENT OF STATE

22 CFR Parts 133 and 137

RIN 1400–AB–33

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Policy Division, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20522, (703) 516–1691.

List of Subjects

22 CFR Part 133

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 137

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Approved: August 17, 2001.

Lloyd W. Pratsch,

Procurement Executive, Department of State.

Accordingly, as set forth in the common preamble, the Department of State proposes to amend 22 CFR chapter I. as follows:

1. Part 133 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

2. Part 133 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of State" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of State" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Procurement Executive" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Procurement Executive" is added in its place wherever it occurs.

3. Section 133.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations

implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 137" in its place.

4. Section 133.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "22 CFR part 135" in its place.

5. Part 137 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 22 U.S.C. 2658; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12689, 3 CFR 1989 Comp., p. 235.

6. Part 137 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of State" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of State" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Procurement Executive" is added in its place wherever it occurs.

7. Section 137.440 is added to read as follows:

§ 137.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 208 and 210

RIN 0412–AA47

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, M/OP/OD, 1300 Pennsylvania Avenue, NW, Washington, DC 20523–7900, (202) 712–4759.

ADDITIONAL SUPPLEMENTARY INFORMATION: USAID has determined not to require written certifications from awardees or persons with whom they propose to enter into covered transactions. In order to clarify that transactions such as host country contracts and procurements under Commodity Import Programs that USAID finances, but does not award, are covered by this regulation, USAID is adding a sentence to the definition of primary covered transactions in 208.110(a)(1)(i).

List of Subjects

22 CFR Part 208

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 210

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 11, 2001.

Mark S. Ward,

Director, Office of Procurement.

Accordingly, as set forth in the common preamble, 22 CFR chapter II is proposed to be amended as follows:

1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

2. Part 208 is further amended as set forth below.

a. "[Agency Noun]" is removed and "U.S. Agency for International Development" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "USAID" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Procurement" is added in its place wherever it occurs.

3. Section 208.440 is added to read as follows:

§ 208.440 What method do I use to communicate requirements in § 208.35 to participants?

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

§ 208.935 Debarring official.

* * * * *

(b) The U.S. Agency for International Development's debarring official is the Director of the Office of Procurement.

5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

§ 208.1010 Suspending official.

* * * * *

(b) The U.S. Agency for International Development's suspending official is the Director of the Office of Procurement.

6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

7. Part 210 is further amended as set forth below.

a. "[Agency Noun]" is removed and "U.S. Agency for International Development" is added in its place wherever it occurs.

b. "[Agency Adjective]" is removed and "USAID" is added in its place wherever it occurs.

c. "[Agency Head or Designee]" is removed and "Director of the Office of Procurement" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "USAID Administrator or designee" is added in its place wherever it occurs.

8. Section 210.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulation implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 208" in its place.

9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

§ 210.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

PEACE CORPS

22 CFR Parts 310 and 312

RIN 0420–AA17

FOR FURTHER INFORMATION CONTACT: Ruth L. Ramsey, Acting General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW, Washington, DC 20526, (202) 692–2150.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes in § 310.440 to use terms or conditions to the award transaction as a means to enforce exclusions under Peace Corps transactions rather than written certifications. This alternative available under the common rule is more efficient than the Peace Corps' current certification process for prospective recipients and participants.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and are proposed to be re-codified as a separate part 312.

List of Subjects

22 CFR Part 310

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 312

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: August 22, 2001.

Michael J. Kole,

Director, Office of Administrative Services, Peace Corps.

For the reasons stated in the common preamble, the Peace Corps proposes to amend 22 CFR chapter III, as follows:

1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 22 U.S.C. 2503; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2. Part 310 is further amended as set forth below.

a. "[Agency noun]" is removed and "Peace Corps" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Peace Corps" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Peace Corps Director or designee" is added in its place wherever it occurs.

3. Section 310.440 is added to read as follows:

§ 310.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 312 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 22 U.S.C. 2503(b); 41 U.S.C. 701 *et seq.*

5. Part 312 is further amended as set forth below.

a. "[Agency noun]" is removed and "Peace Corps" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Peace Corps" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Peace Corps Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Peace Corps Director" is added in its place wherever it occurs.

6. Section 312.510(c) is further amended by removing "[CFR citation for the federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 310" in its place.

7. Section 312.605 is further amended by adding a paragraph (c) to read as follows:

§ 312.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

INTER-AMERICAN FOUNDATION

22 CFR Parts 1006 and 1008

FOR FURTHER INFORMATION CONTACT: Carolyn Karr, General Counsel, Inter-

American Foundation, 901 N. Stuart Street, Arlington, Virginia 22203, (703) 306–4350, *ckarr@iaf.gov*.

List of Subjects

22 CFR Part 1006

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 1008

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

David Valenzuela,

President, Inter-American Foundation.

For the reasons stated in the common preamble, the Inter-American Foundation proposes to amend 22 CFR chapter X, as follows:

1. Part 1006 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 1006 is further amended as set forth below.

a. "[Agency noun]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Inter-American Foundation Debarring Official" is added in its place wherever it occurs.

3. Section 1006.440 is added to read as follows:

§ 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 1008 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1008 is further amended as set forth below.

a. "[Agency noun]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Inter-American

Foundation President or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

6. Section 1008.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 1006" in its place.

7. Section 1008.605 is further amended by adding a paragraph (c) to read as follows:

§ 1008.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Parts 1508 and 1509

RIN Number 3005–ZA00

FOR FURTHER INFORMATION CONTACT: Doris Martin at 202–673–3916 (phone) or *domartin@adf.gov.*

List of Subjects

22 CFR Part 1508

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

22 CFR Part 1509

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

Doris Martin,

General Counsel.

For the reasons stated in the preamble, the African Development Foundation proposes to amend 22 CFR chapter XV as follows:

1. Part 1508 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

2. Part 1508 is further amended as set forth below:

a. "[Agency noun]" is removed and "African Development Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ADF" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ADF President" is added in its place wherever it occurs.

3. Part 1509 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*

4. Part 1509 is further amended as set forth below.

a. "[Agency noun]" is removed and "African Development Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ADF" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ADF President" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "ADF President" is added in its place wherever it occurs.

5. Section 1509.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 1508" in its place.

6. Section 1509.605 is further amended by adding a paragraph (c) to read as follows:

§ 1509.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

DEPARTMENT OF LABOR

29 CFR Part 94 and 98

RIN 1291–AA33

FOR FURTHER INFORMATION CONTACT: Phyllis McMeekin, Director Division of Departmental Procurement Policy, N5425 Washington, DC 20210, (202) 219–9174, email McMeekin-Phyllis@dol.gov

List of Subjects

29 CFR Part 94

Administrative practices and procedures, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 98

Administrative practices and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

Elaine L. Chao,

Secretary of Labor.

For the reasons stated in the common preamble, the Department of Labor proposes to amend 29 CFR subtitle A as follows:

Part 94 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 94—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Department of Labor Awarding Officials

Subpart E—Violations of this Part and Consequences

Subpart F—Definitions

Authority: 41 U.S.C. 701 *et seq.*

2. Part 94 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Labor" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Labor" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

3. Section 94.510(c) is further amended by removing "CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "29 CFR Part 98" in its place.

4. Section 98.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "29 CFR part 97" in its place.

5. Part 98 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Subpart B—Covered Transactions

Authority: 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 Note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

6. Part 98 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Labor" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Labor" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Parts 1471 and 1472

RIN 3076–AA08

FOR FURTHER INFORMATION CONTACT: Jane Lorber, General Counsel, 2100 K St., NW, Washington, DC 20427, (202) 606–5444, e-mail: jlorber@fmcs.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: This proposed rule relocates the requirements for maintaining a drug-free workplace from 29 CFR part 1471 to 29 CFR part 1472.

List of Subjects

29 CFR Part 1471

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

29 CFR Part 1472

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

C. Richard Barnes,

Director.

Accordingly, as set forth in the common preamble, the Federal Mediation and Conciliation Service proposes to amend 29 CFR chapter XII, as follows:

1. Part 1471 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12549 ,3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 29 U.S.C. 175a.

2. Part 1471 is further amended as set forth below.

a. "[Agency noun]" is removed and "Federal Mediation and Conciliation Service" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FMCS" is added in its place wherever it occurs.

c. "[Agency Head or designee]" is removed and "Agency Director" is added in its place wherever it occurs.

3. Section 1471.440 is added to read as follows:

§ 1471.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1472 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1472 —GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701, *et seq.*

5. Part 1472 is further amended as set forth below.

a. "[Agency noun]" is removed and "Federal Mediation and Conciliation Service" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FMCS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Agency Director" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Agency Director" is added in its place wherever it occurs.

6. Section 1472.510 (c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding "29 CFR part 1471" in its place.

7. Section 1472.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "29 CFR part 1470" in its place.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 25 and 26

RIN 0790–AG86

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, DC 20301–3080, telephone: (703) 696–0372.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) proposes to adopt two updated common rules, on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. In adopting these rules, the Office of the Secretary of Defense, Military Departments, Defense Agencies, and DoD Field Activities will maintain uniform policies and procedures that are consistent with those of other Executive Departments and Agencies. At the time the final rule is adopted, the DoD will make conforming amendments in other parts of the DoD Grant and Agreement Regulations (32 CFR parts 21, 22, 32, and 34), to update references to the debarment and suspension and the drug-free workplace requirements that currently are in 32 CFR part 25.

List of Subjects

32 CFR Part 25

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements

32 CFR Part 26

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements

Approved: August 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, as set forth in the common preamble, 32 CFR chapter I, subchapter B, is proposed to be amended as follows.

1. Part 25 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12689 , 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Part 25 is further amended as set forth below.

a. "[Agency noun]" is removed and "DoD Component" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoD Component" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Head of the DoD Component or his or her designee" is added in its place wherever it occurs.

3. Section 25.440 is added to read as follows:

§ 25.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 25.935 is further amended by adding paragraph (b) to read as follows:

§ 25.935 Debarring official.

* * * * *

(b) DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as debarring officials for procurement contracts.

5. Section 25.942 is added to read as follows:

§ 25.942 DoD Component.

DoD Component means the Office of the Secretary of Defense, a Military

Department, a Defense Agency, or the Office of Economic Adjustment.

6. Section 25.1010 is further amended by adding a paragraph (b) to read as follows:

§ 25.1010 Suspending official.

* * * * *

(b) DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as suspending officials for procurement contracts.

7. Part 26 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 26—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
26.100 What does this part do?
26.105 Does this part apply to me?
26.110 Are any of my Federal assistance awards exempt from this part?
26.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

26.200 What must I do to comply with this part?
26.205 What must I include in my drug-free workplace statement?
26.210 To whom must I distribute my drug-free workplace statement?
26.215 What must I include in my drug-free awareness program?
26.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
26.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
26.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

26.300 What must I do to comply with this part if I am an individual recipient?
26.301 [Reserved]

Subpart D—Responsibilities of DoD Component Awarding Officials

26.400 What are my responsibilities as a DoD Component awarding official?

Subpart E—Violations of This Part and Consequences

26.500 How are violations of this part determined for recipients other than individuals?
26.505 How are violations of this part determined for recipients who are individuals?
26.510 What actions will the Federal Government take against a recipient determined to have violated this part?
26.515 Are there any exceptions to those actions?

Subpart F—Definitions

26.605 Award.
26.610 Controlled substance.
26.615 Conviction.
26.620 Cooperative agreement.
26.625 Criminal drug statute.
26.630 Debarment.
26.632 DoD Component.
26.635 Drug-free workplace.
26.640 Employee.
26.645 Federal agency or agency.
26.650 Grant.
26.655 Individual.
26.660 Recipient.
26.665 State.
26.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

8. Part 26 is further amended as set forth below.

a. "[Agency noun]" is removed and "DoD Component" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoD Component" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Head of the DoD Component or his or her designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Defense or Secretary of a Military Department" is added in its place wherever it occurs.

9. Section 26.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "32 CFR part 25" in its place.

10. Section 26.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "32 CFR part 33" in its place.

11. Section 26.632 is added to read as follows:

§ 26.632 DoD Component.

DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

DEPARTMENT OF EDUCATION

34 CFR Parts 84, 85, 668, and 682

RIN 1890–AA07

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E211, Washington, DC 20202–2243. Telephone: 202–401–6700 or via e-mail *Peter.Wathen-Dunn@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule would provide agencies with certain areas of flexibility in adopting the common rule. An agency can determine the extent to which the effect of a debarment or suspension action flows down to tiers lower than a nonprocurement transaction. Under the original common rule, every procurement below the nonprocurement level is covered if it exceeds the small purchase threshold ($25,000). The Department of Education has significant vulnerabilities to fraud and abuse below the nonprocurement level, particularly among participants in the financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070, *et seq.* Thus, the Secretary proposes language for § 85.220(d) that preserves coverage at multiple lower tiers for any contract or subcontract that is greater than $25,000, and language for § 85.220(e) that reaches contracts for services for title IV HEA programs without regard to dollar amount.

For example, if a subgrantee entered into a contract with a third party and the contract exceeds the $25,000 threshold, the contract would be covered under the proposed rule and every subcontract after that would be covered if it exceeds that threshold.

The Secretary also proposes to adopt the rule so that direct notice between one tier and the next of the potential for suspension and debarment is not needed to impose coverage. As explained more fully later in this preamble, certain persons pose significant risks to the U.S. Department of Education (ED) funded programs even though in some cases those people receive no funds directly from ED related to the transaction over which they have a significant control or influence.

The Secretary proposes additional changes to the common rule. These changes would clarify the effect of debarment and suspension actions on an institution's eligibility to participate in student assistance programs authorized under title IV of the HEA, 20 U.S.C. 1070, *et seq.* These changes are consistent with the original common rule, as adopted by the Department in 1988.

The Secretary also proposes to clarify some of the coverage definitions to ensure that any person who has a significant control or influence over an ED transaction would be covered. The

Secretary would also clarify the meaning of "principal" and "participant" in the context of title IV, HEA transactions. The Secretary considers an excluded person to pose significant risk to the integrity of the title IV, HEA programs. Thus, the Secretary proposes changes to the common rule regarding the definition of an excluded "principal." The proposed revised definition would include those persons who would—

- Provide services as third-party servicers to schools, lenders, and guarantors that participate in the title IV, HEA programs.
- Provide counsel or guidance directly to third-party servicers; or
- Provide counsel or guidance through a third-party servicer, indirectly or directly, to the lender, school, or guarantor.

To further clarify this position and to make participants aware of this precaution, the Secretary expressly designates as a covered lower-tier transaction any contract between a third-party servicer and a lender, school, or guarantor, regardless of the amount of the contract.

Parties apparently have structured these types of transactions to avoid the dollar threshold needed to extend coverage to lower-tier procurement transactions. The Secretary proposes this change to avoid attempts by excluded parties to use agreements or arrangements that contain indefinite or ambiguously phrased compensation provisions to evade sanction. In addition, the Secretary considers the dollar amount of the procurement contract for the services of an excluded person to have no necessary connection with the amount of abuse that may be caused by the excluded person.

The proposed changes would make the scope of the exclusion clearer and easier for participants to apply to their transactions.

The common rule allows a participant to continue to use the services of an excluded person on the premise that the transaction or agreement under which a participant operates has a limited duration. However, it is contrary to the intent of the rule, to apply that approach to situations in which the party participates under an agreement or arrangement of extended or even indefinite duration. Several major title IV, HEA agreements have no stated expiration date; others, including program participation agreements with postsecondary institutions, commonly extend for six years.

The Secretary wishes to prevent a title IV, HEA participant from continuing to use the services of an excluded person under this kind of agreement or arrangement. Thus, the Secretary—solely for the purpose of this rule—proposes to treat these agreements as having limited duration, regardless of other regulatory or contractual provisions that control their duration as between the participant and the Government. The Secretary considers this approach necessary in order to ensure a level of protection for these kinds of transactions or agreements that the common rule is intended to achieve for other Federal agreements.

Thus, for the purposes of title IV, HEA transactions, the Secretary proposes to allow a participant to continue to use the services of the excluded person for a period of 90 days or up to the close of the Federal fiscal year in which the participant learns of the exclusion, whichever is longer. This would give the participant time to arrange for a substitute to perform needed services.

Because this NPRM would reorganize part 85 of title 34 of the Code of Federal Regulations (CFR), some of the cross-references to this part in parts 668 and 682 of the CFR would become obsolete when this rule becomes final. Therefore, the Secretary proposes to make conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

Also, the Secretary proposes to remove 34 CFR 682.705(a)(3), which prescribes the duration of a suspension by another Federal agency. Because the period of the suspension is expressly covered in proposed 34 CFR 85.612(b), there is no need to retain the separate explanation.

Finally, we note that the common rule clarifies the conditions under which a Federal agency gives a respondent an opportunity to challenge facts on which the agency based a suspension or proposed debarment.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects

34 CFR Part 84

Debarment and suspension, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 85

Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 6, 2001.

Rod Paige,

Secretary of Education.

For the reasons stated in the common preamble and in the specific preamble of the Department of Education (ED), the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding part 84, revising part 85, and amending parts 668 and 682 to read as follows:

1. Part 84 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 84—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327, unless otherwise noted.

2. Part 84 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Education" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ED" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

3. Section 84.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "34 CFR part 85" in its place.

4. Section 84.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "34 CFR part 85" in its place.

5. Each section in part 84 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

6. Part 85 is revised to read as provided in instruction 1 at the end of the common preamble:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12698 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

7. Part 85 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Education" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ED" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

d. Each section in part 85 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

8. Section 85.220 is further amended by adding new paragraphs (d) and (e) to read as follows.

§ 85.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, that is funded or authorized under ED programs and is expected to equal or exceed $25,000.

(e) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

9. Section 85.305 is further amended by adding paragraph (c) to read as follows:

§ 85.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

* * * * *

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

10. Section 85.310 is further amended by adding paragraph (c) to read as follows:

§ 85.310 May I use the services of an excluded person under a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

11. Section 85.415 is further amended by adding a new paragraph (c) to read as follows.

§ 85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

12. Subpart D of part 85 is further amended by adding § 85.440 to read as follows:

§ 85.440 What method do I use to communicate those requirements to participants?

(a) To communicate those requirements, you must include a term or condition in the transaction requiring each participant's compliance with subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

(b) The failure of a participant to include a requirement to comply with subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR, 1985 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

13. Subpart F of part 85 is further amended by adding a new § 85.611 to read as follows:

§ 85.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 85.715.

(2) Instead of the procedures in §§ 85.720 through 85.760, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 85.700.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§ 85.805 and 85.870.

(2) Instead of the procedures in §§ 85.810 through 85.885, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 85.800.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

14. Subpart F of Part 85 is further amended by adding § 85.612 to read as follows:

§ 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If ED or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 85.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to the exclusion action;

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

(6) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474, and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

15. Subpart G is further amended by adding a new § 85.711,to read as follows:

§ 85.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under § 85.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 85.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

16. Subpart H is further amended by adding a new § 85.811 to read as follows:

§ 85.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under § 85.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the debarment takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

17. Subpart I of part 85 is further amended by adding § 85.942 to read as follows:

§ 85.942 ED Deciding Official.

The ED Deciding Official is an ED officer who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

18. Subpart I of part 85 is further amended by adding § 85.947 to read as follows:

§ 85.947 HEA.

HEA means the Higher Education Act of 1965, as amended.

19. Section 85.995 is further amended by adding paragraph (c) to read as follows:

§ 85.995 Principal.

* * * * *

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

* * * * *

20. Subpart I of part 85 is further amended by adding § 85.1016 to read as follows:

§ 85.1016 Title IV, HEA participant.

A title IV, HEA participant is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

21. Subpart I of part 85 is further amended by adding § 85.1017 to read as follows:

§ 85.1017 Title IV, HEA program.

A title IV, HEA program includes any program listed in 34 CFR 668.1(c).

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p.1890: E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

22. Subpart I of part 85 is further amended by adding § 85.1018 to read as follows:

§ 85.1018 Title IV, HEA transaction.

A title IV, HEA transaction includes:

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

(c) Guaranteeing a loan made under a title IV, HEA program; and

(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

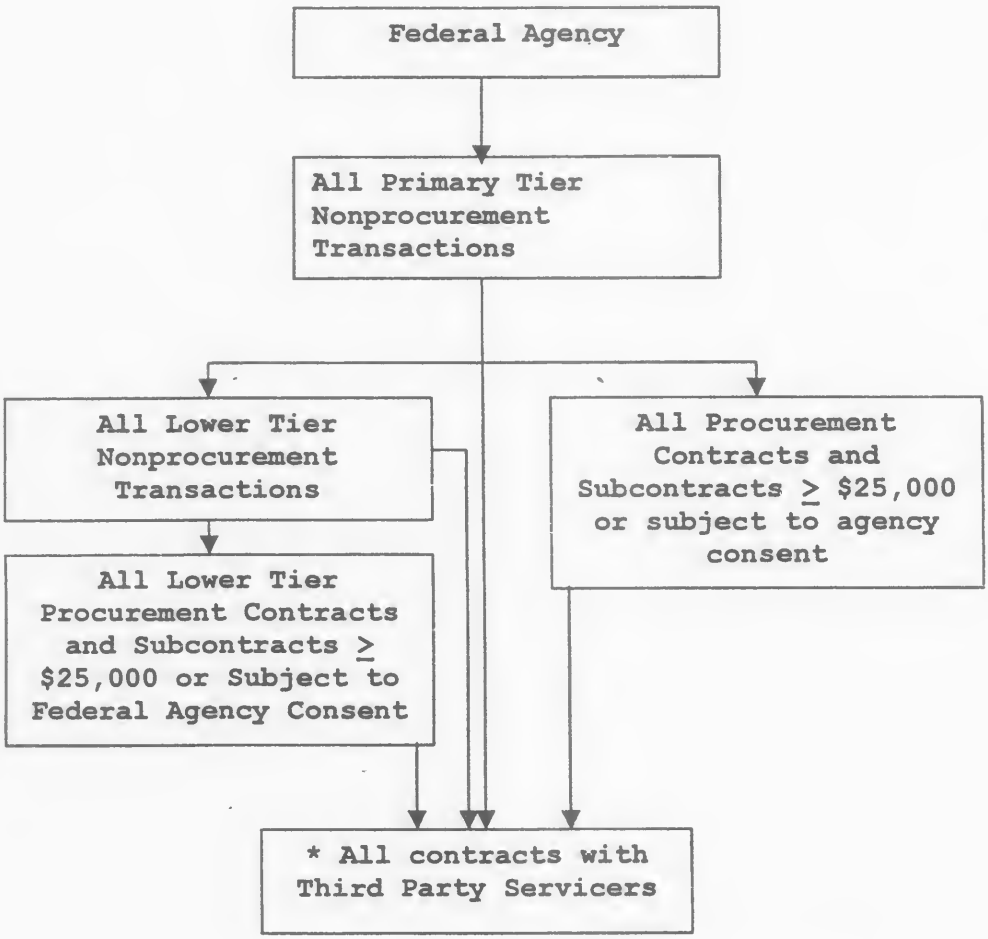
(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

23. The appendix to part 85 is amended by removing and reserving the Covered Transactions Chart and by adding a Covered Transactions for ED Chart to read as follows.

BILLING CODE 6325–01–P et al.

Appendix to Part 85 - Covered Transactions for ED

Covered Transactions [Reserved]



* Note: All contracts for third-party servicers are covered transactions, regardless of whether a Title IV, HEA participant has contracted directly or indirectly with the servicer.

BILLING CODE 6325-01-C et al.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

24. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.82 [Amended]

25. Amend § 668.82 as follows:

a. In paragraph (e)(1)(i)(B), by removing the words "Cause exists under 34 CFR 85.305 or 85.405" and adding, in their place, the words "Cause exists under 34 CFR 85.700 or 85.800".

b. In paragraphs (f)(1) and (f)(2)(i), by removing the citation "34 CFR 85.201(c)" and adding, in its place, the citation "34 CFR 85.612(d)".

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

26. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.416 [Amended]

27. Amend § 682.416(d)(1)(ii)(B) by removing the words "cause under 34 CFR 85.305 or 85.405" and adding, in their place, the words "cause under 34 CFR 85.700 or 85.800."

§ 682.705 [Amended]

28. Amend § 682.705 by removing paragraph (a)(3).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1209 and 1212

RIN 3095–AB04

FOR FURTHER INFORMATION CONTACT: Nancy Allard at Policy and Communications Staff (NPOL), Room 4100, 8601 Adelphi Road, College Park, Maryland 20740–6001, 301–713–7360, extension 226, or *comments@nara.gov*.

List of Subjects

36 CFR Part 1209

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

36 CFR Part 1212

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: May 4, 2001.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the common preamble, the National Archives and Records Administration amends 36 CFR chapter XII as follows:

1. Part 1209 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 44 U.S.C. 2104(a); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 1209 is further amended as set forth below.

a. "[Agency noun]" is removed and "NARA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NARA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

3. Section 1209.440 is added to read as follows:

§ 1209.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1212 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1212—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701, et seq.; 44 U.S.C. 2104(a).

5. Part 1212 is further amended as set forth below.

a. "[Agency noun]" is removed and "NARA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NARA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

6. Section 1212.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "36 CFR part 1209" in its place.

7. Section 1212.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "36 CFR part 1207" in its place .

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 44 and 48

RIN 2900–AK16

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7369, e-mail: lgyrfinn@vba.va.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: VA is a party to the proposed common rule with the following differences.

Under proposed § 44.435 for certain nonprocurement transactions, a primary tier participant must communicate to each lower tier participant that the lower tier participant must not have been debarred or suspended. We propose to add § 44.440 to require the communication to be included as a condition in the covered transaction document. We believe this is adequate to ensure that the parties understand and comply with debarment and suspension requirements.

Under the proposed common rule, the debarring and suspending official is the agency head or an official designated by the agency head. We propose at § 44.935 and § 44.1010 of the proposed common rule to add as the debarring and suspending official the following: for the Veterans Health Administration, the Under Secretary for Health; for the Veterans Benefits Administration, the Under Secretary for Benefits; and for the National Cemetery Administration, the Deputy Under Secretary for Operations.

Proposed § 44.995 of the debarment and suspension common rule, defines the term "principal." A principal is subject to the debarment and suspension requirements. Agencies implementing the common rule are allowed to add principals that are commonly involved in their covered transactions. VA proposes to retain as principals, at proposed § 44.995(c), the positions designated in the current regulation, 38 CFR 44.105. This is intended to include those that have significant responsibilities in real estate transactions affecting VA. We also propose to add mortgage brokers to this list due to their significant responsibilities in real estate transactions with VA.

Requirements to ensure that certain grantees maintain a drug-free workplace currently are set forth at 38 CFR part 44, subpart F. We propose that these provisions, with proposed amendments explained above in the preamble for the common rule, be transferred to a new 38 CFR part 48.

List of Subjects

38 CFR Part 44

Administrative practice and procedure, Condominiums, Debarment and suspension, Grant programs, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 48

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 15, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I as follows:

1. Part 44 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart J [Reserved]

Appendix to Part 44—Covered Transactions

Authority: 38 U.S.C. 501 and 38 U.S.C. 3703(c); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR 1986 comp., p. 189) E.O. 12689 (3 CFR 1989 Comp., p. 235).

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2. Part 44 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary" is added in its place wherever it occurs.

3. Section 44.440 is added to read as follows:

§ 44.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 44.935 is further amended by adding paragraph (b) to read as follows:

§ 44.935 Debarring official.

* * * * *

(b) For the Department of Veterans Affairs the debarring official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

5. Section 44.995 is further amended by adding a paragraph (c) to read as follows:

§ 44.995 Principal.

* * * * *

(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

(1) Loan officers.

(2) Loan solicitors,

(3) Loan processors.

(4) Loan servicers.

(5) Loan supervisors.

(6) Mortgage brokers.

(7) Office managers.

(8) Staff appraisers and inspectors.

(9) Fee appraisers and inspectors.

(10) Underwriters.

(11) Bonding companies.

(12) Real estate agents and brokers.

(13) Management and marketing agents.

(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.

(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.

(16) Closing Agents.

6. Section 44.1010 is further amended by adding paragraph (b) to read as follows:

§ 44.1010 Suspending official.

* * * * *

(b) For the Department of Veterans Affairs the suspending official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

7. Part 48 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

48.100 What does this part do?

48.105 Does this part apply to me?

48.110 Are any of my Federal assistance awards exempt from this part?

48.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

48.200 What must I do to comply with this part?

48.205 What must I include in my drug-free workplace statement?

48.210 To whom must I distribute my drug-free workplace statement?

48.215 What must I include in my drug-free awareness program?

48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

48.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

48.300 What must I do to comply with this part if I am an individual recipient?

48.301 [Reserved]

Subpart D—Responsibilities of the Department of Veterans Affairs Awarding Officials

48.400 What are my responsibilities as a Department of Veterans Affairs awarding official?

Subpart E—Violations of This Part and Consequences

48.500 How are violations of this part determined for recipients other than individuals?

48.505 How are violations of this part determined for recipients who are individuals?

48.510 What actions will the Federal Government take against a recipient determined to have violated this part?

48.515 Are there any exceptions to those actions?

Subpart F—Definitions

48.605 Award.

48.610 Controlled substance.

48.615 Conviction.

48.620 Cooperative agreement.

48.625 Criminal drug statute.

48.630 Debarment.

48.635 Drug-free workplace.

48.640 Employee.

48.645 Federal agency or agency.

48.650 Grant.

48.655 Individual.

48.660 Recipient.

48.665 State.

48.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 38 U.S.C 501.

8. Part 48 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary" is added in its place wherever it occurs.

9. Section 48.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding "38 CFR part 44" in its place.

10. Section 48.605(a)(2) is further amended by removing "[Agency specific CFR citation]" and adding "38 CFR part 43" in its place.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 32 and 36

[FRL 7075–5]

RIN 2030 AA48

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, EPA Debarring Official, Office of Grants and Debarment (3901R), U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, (202) 564–5399, e-mail: *meunier.robert@epa.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION:

A. Optional Provisions

This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 32.220 for all contracts that equal or exceed the $25,000 award threshold under EPA nonprocurement transactions. This election maintains the EPA's present practice under the common rule.

In addition, § 32.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under EPA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the EPA's current certification process for prospective recipients and participants.

Sections 32.765 and 32.890 are included as additional sections under part 32 to continue the EPA's practice of permitting persons who have been suspended or debarred by the EPA Debarring Official to obtain a limited review of that decision. However, these sections transfer the authority for issuing a stay on a suspension or debarment decision from the debarring official to the review official. This change from current practice reflects a more practical approach to matters accepted for review. A similar provision appears at § 32.1400 of subpart J to this part for persons seeking review of reinstatement denials under the Clean Air Act (CAA) or Clean Water Act (CWA) disqualification provisions.

Section 32.995 of the nonprocurement suspension and debarment common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. EPA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have employees who are excluded.

B. Clean Air Act and Clean Water Act Disqualification

The EPA proposes to include a subpart J in its version of the common rule to address CAA and CWA disqualification and reinstatement. In 1994, the EPA transferred the responsibility for administration of those requirements from the Office of Enforcement and Compliance Assurance to the Office of Administration and Resources Management in an effort to consolidate all of the Agency's statutory and discretionary debarment authority into a single program. In 1996, the EPA removed its regulations at 40 CFR part 15 and amended various provisions within 40 CFR part 32 to accommodate the change. A separate subpart J in part 32 will highlight the various differences between EPA's discretionary and statutory debarment authorities, while retaining these complementary actions under a single program.

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 regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The disqualification from procurement and nonprocurement awards of persons who have been convicted of designated offenses under the CAA and CWA are statutorily mandated, as are the requirements for reestablishing procurement and nonprocurement eligibility. This proposed rule sets forth the procedures EPA uses under existing rules to decide petitions for CAA and CWA reinstatement in a separate subpart from those procedures that apply to discretionary debarment actions, and explains those procedures in a plain language format. Thus, Executive Order 13175 does not apply to this rule.

D. Drug-Free Workplace Requirements

This proposed rule relocates the requirements for maintaining a drug-free workplace from 40 CFR part 32 to 40 CFR part 36 and proposes to restate those requirements in plain language format.

List of Subjects

40 CFR Part 32

Environmental protection, Administrative practice and procedure, Air pollution control, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

40 CFR Part 36

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and record keeping requirements.

Dated: June 11, 2001.

David J. O'Connor,

Acting Assistant Administrator, Office of Administration and Resources Management, Environmental Protection Agency.

For the reasons stated in the common preamble, the Environmental Protection Agency proposes to amend 40 CFR chapter I, as follows:

1. Part 32 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 32 is further amended as set forth below.

a. "[Agency noun]" is removed and "EPA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "EPA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "EPA Debarring Official" is added in its place wherever it occurs.

3. Section 32.220 is further amended by adding a paragraph (d) to read as follows:

§ 32.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 32.440 is added to read as follows:

§ 32.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 32.765 is added to subpart G to read as follows:

§ 32.765 How may I appeal my suspension?

(a) If the EPA suspending official issues a decision under § 32.755 to continue your suspension after you present information in opposition to that suspension under § 32.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 32.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

6. Section 32.890 is added to subpart H to read as follows:

§ 32.890 How may I appeal my debarment?

(a) If the EPA debarring official issues a decision under § 32.870 to debar you after you present information in opposition to a proposed debarment under § 32.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 32.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the

discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

7. Section 32.995 is further amended by adding a paragraph (c) to read as follows:

§ 32.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in EPA covered transactions include:

(1) Principal investigators;

(2) Technical or management consultants;

(3) Individuals performing chemical or scientific analysis or oversight;

(4) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;

(5) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;

(6) Individuals whose duties require special licenses;

(7) Individuals that certify, authenticate or authorize billings; and

(8) Individuals that serve in positions of public trust.

8. Subpart J is added to read as follows:

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

§ 32.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606), and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (*see* § 32.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, and subparts A through I of this part). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

§ 32.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted or likely be convicted of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

§ 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 32.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (*i.e.*, covered transactions under subparts A through I of this part, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

(a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and

(b) You own, lease or supervise the violating facility.

§ 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarring official believes were designed to improperly circumvent a CAA or CWA disqualification.

§ 32.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

§ 32.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA sends your name and address and that of the violating facility to the General Services Administration (GSA) as soon as possible after the EPA learns of your conviction. The GSA places your name and that of the violating facility on the *List of Parties Excluded from Procurement and Nonprocurement Programs (List)*, along with other information describing the nature of your disqualification . Federal award officials and others who administer Federal programs consult the List before entering into or approving procurement and nonprocurement transactions. Award officials and others, including the public, may obtain a yearly subscription to a printed version of the *List* from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238. As an alternative, anyone may access the *List* through the internet, currently at http://epls.arnet.gov.

§ 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of this part or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 32.1105, ordinarily your name and that of the violating facility is placed on the GSA *List* before you receive a confirmation notice of the listing, or have an opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement or nonprocurement activities on the basis

of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4.

§ 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§ 32.1205 and 32.1300.

§ 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from the prohibitions otherwise resulting from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and

(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

§ 32.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction under the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name on the GSA *List*. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been sent to the GSA for inclusion in the *List*. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

§ 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

§ 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 32.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

§ 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with §§ 32.830 through 32.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

§ 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in § 32.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. Environmental Protection Agency, Office of Grants and Debarment (3901–

R), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

§ 32.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 32.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 32.1205(b).

§ 32.1230 How will the EPA debarring official notify me of the reinstatement decision?

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under § 32.615.

§ 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

§ 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official, whether the certification results from a reinstatement decision under §§ 32.1205(a) and 32.1230, or from an administrative agreement under §§ 32.1205(b) and 32.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of the Inspector General for potential criminal or civil action.

§ 32.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and the reason for your position.

(c) A review by the OGD Director under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures identified at §§ 32.615 and 32.975.

§ 32.1500 If I am reinstated, when will my name be removed from the GSA List?

(a) If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will notify the GSA within 5 working days of your reinstatement and ask GSA to remove your name and that of the violating facility from the *List*.

(b) You may check the *List* manually or through the internet as stated at § 32.1125, to confirm that your name and that of the violating facility are removed from the *List* following reinstatement. In the event your name is not removed in a timely manner, you should call the EPA debarring official or the EPA representative identified under the agency contacts section of the *List* to inform them that the listing has not been removed.

§ 32.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart I of this part that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) *Person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) *Violating facility* means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transaction may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

9. Part 36 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 36—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

Authority: 41 U.S.C. 701 *et seq.*

10. Part 36 is further amended as set forth below.

a. "[Agency noun]" is removed and "EPA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "EPA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "EPA Administrator or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "EPA Administrator" is added in its place wherever it occurs.

11. Section 36.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "40 CFR part 32" in its place.

12. Section 36.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "40 CFR part 31" in its place.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

RIN 3090–AH35

FOR FURTHER INFORMATION CONTACT: Donald J. Suda, Special Assistant for Contractor Integrity, General Services Administration, 1800 F Street NW., Washington, DC 20405–0002, (202) 501–4770, e-mail: *donald.suda.@gsa.gov*

List of Subjects

41 CFR Part 105–68

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

41 CFR Part 105–74

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: July 5, 2001.

Stephen A. Perry,

Administrator of General Services.

For the reasons stated in the preamble, the General Services Administration proposes to amend 41 CFR chapter 105 as follows:

CHAPTER 105—[AMENDED]

1. Part 105–68 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 105–68 is further amended as set forth below.

a. "[Agency noun]" is removed and "General Services Administration" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "GSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

3. Section 105–68.440 is added to read as follows:

§ 105–68.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 105–74 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 105–74—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of GSA Awarding Officials

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 41 U.S.C. 701 *et seq.*

5. Part 105–74 is further amended as set forth below.

a. "[Agency noun]" is removed and "General Services Administration" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "GSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

6. Section 105–74.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "41 CFR part 105–68" in its place.

7. Section 105–74.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "41CFR part 105–71" in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Parts 12, 42 and 43

RIN 1090–AA79

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, Director, Office of Acquisition and Property Management, (202) 208–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) proposes to adopt the proposed common, governmentwide rule for debarment and suspension, and the common, governmentwide rule implementing the Drug-Free Workplace Act of 1988, with several specific provisions that apply to the Department of the Interior. The two proposed common rules are contained in the Notice of Proposed Rulemaking for a number of agencies, earlier in this document. This preamble for the Department sets out the headings of the sections of the proposed common rules that the Department proposes to adopt, with the appropriate numbering system for the Department. This preamble also explains the deviations from the proposed common rules.

The Department joined in the publication of the governmentwide common rule which provided requirements for nonprocurement debarment and suspension by Executive branch agencies published on May 26, 1988 (53 FR 19160), found at 43 CFR 12.100 to 12.510. In 43 CFR 12.200(c)(8), the Department excluded from the requirements of the rule any transactions entered into pursuant to Pub. L. 93–638, "Indian Self Determination and Education Assistance Act," since application of the common rule to such transactions was prohibited by Pub. L. 93–638.

The Department also joined in the January 31, 1989, publication of the amendment to the governmentwide common rule on nonprocurement debarment and suspension and revised Subpart D to implement the Drug-Free Workplace Act of 1988 (54 FR 4946), found at 43 CFR 12.600 to 12.635.

At the time of the revision to the common rule for nonprocurement debarment and suspension which was issued in response to Executive Order 12689 and section 2455 of the Federal Acquisition Streamlining Act of 1994, and published on June 26, 1995 (60 FR 33035), the Department excluded additional transactions from the requirements of the nonprocurement debarment and suspension regulations. Specifically, in 43 CFR 12.200(c)(9)–(11), the Department excluded all transactions concerning permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims, water service contracts, and repayment contracts from the nonprocurement debarment and suspension regulations.

In this proposed rule, the Department will continue to exclude all transactions excluded in the current regulations at 43 CFR 12.200(c)(8)–(11). These exclusions are found at 43 CFR 42.215 (h)–(k) in the proposed rule.

In this proposed rule, the Department will discontinue the use of a certification from participants contained in 43 CFR 12.510(a). The Department proposes to include a term or condition in transaction documents which requires the participants' compliance. The term or condition will also require participants to include a similar term or condition in lower-tier covered transactions as well. This new provision is found at 43 CFR 42.440 of the proposed rule.

The requirements for nonprocurement debarment and suspension, currently found at 43 CFR 12.100 to 12.510 are

being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 42.

The requirements for maintaining a drug-free workplace, currently found at 43 CFR 12.600 to 12.635, are being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 43.

Compliance With Laws, Executive Orders, and Department Policy

In addition to the certifications stated in the general preamble, the Department is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3 (b) of the Order.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

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 Executive Order 13175 (65 FR 67249), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources.

List of Subjects

43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grant administration.

43 CFR Part 42

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements.

43 CFR Part 43

Administrative practice and procedure, Contract programs, Cooperative agreements, Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: May 30, 2001.

Robert J. Lamb,

Acting Assistant Secretary-Policy, Management and Budget.

Accordingly, for the reasons stated in the common preamble and in the above additional supplementary information section, 43 CFR subtitle A is proposed to be amended as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; U.S.C 6101 note.

2. Part 12, Subpart D is removed and reserved.

3. Part 42 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; 31 U.S.C.

4. Part 42 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of the Interior" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of the Interior" is added in its place where it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Acquisition and Property Management" is added in its place wherever it occurs.

5. Section 42.215 is further amended by adding paragraphs (h) through (k) to read as follows:

§ 42.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(i) Under natural resource management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(j) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et. seq.*

(k) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

6. Section 42.440 is added to read as follows:

§ 42.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

7. Section 42.935 is further amended by adding paragraph (b) to read as follows:

§ 42.935 Debarring official.

* * * * *

(b) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

8. Section 42.970 is further amended by adding paragraphs (a)(12) through (a)(15) to read as follows:

§ 42.970 Nonprocurement transaction.

* * * * *

(a) * * *

(12) Federal acquisition of a leasehold interest or any other interest in real property.

(13) Concession contracts.

(14) Disposition of Federal real and personal property and natural resources.

(15) Any other nonprocurement transactions between the Department and a person.

* * * * *

9. Section 42.1010 is further amended by adding paragraph (b) to read as follows:

§ 42.1010 Suspending official.

* * * * *

(b) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

10. Part 43 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Department of the Interior Awarding Officials?

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. Sections 252a and 701 *et seq.*

11. Part 43 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of the Interior" is added in its place where it occurs.

b. "[Agency adjective]" is removed and "Department of the Interior" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Acquisition and Property Management" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of the Interior" is added in its place wherever it occurs.

12. Section 43.301 is added to read as follows:

§ 43.301 Is there a central point to which I may report information required by § 43.300?

No. The Department of the Interior is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

13. Section 43.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "43 CFR part 42" in its place.

14. Section 43.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "43 CFR part 12" in its place.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 17 and 21

RIN 3067–AD15

FOR FURTHER INFORMATION CONTACT: Edward Broyles, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3961, e-mail *Edward.Broyles@fema.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 17.220 for all contracts that equal or exceed the $25,000 award threshold under FEMA nonprocurement transactions. This election maintains FEMA's present practice under the common rule.

In addition, § 17.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under FEMA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than FEMA's current certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 44 CFR part 17 to 44 CFR part 21.

List of Subjects

44 CFR Part 17

Administrative practice and procedure, Grant programs.

44 CFR Part 21

Administrative practice and procedure, Grant programs, Drug abuse, Reporting and recordkeeping requirements.

Dated: June 22, 2001.

Patricia A. English,

Acting Chief Financial Officer, Federal Emergency Management Agency.

For the reasons stated in the common preamble, the Federal Emergency Management Agency proposes to amend 44 CFR chapter I, as follows:

1. Part 17 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 17 is further amended as set forth below.

a. "[Agency noun]" is removed and "FEMA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FEMA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "FEMA Debarring Official" is added in its place wherever it occurs.

3. Section 17.220 is further amended by adding a paragraph (d) to read as follows:

§ 17.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by FEMA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 17.440 is added to read as follows:

§ 17.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 21 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*

6. Part 21 is further amended as set forth below.

a. "[Agency noun]" is removed and "FEMA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FEMA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "FEMA Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "FEMA Director" is added in its place wherever it occurs.

7. Section 21.1510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "44 CFR part 17" in its place.

8. Section 21.1605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "44 CFR part 13" in its place.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 76 and 82

RIN 0991–AB12

FOR FURTHER INFORMATION CONTACT: Terrence J. Tychan, Deputy Assistant Secretary, Office of Grants and Acquisition Management, 202–690–6901; for the hearing impaired only: TDD 202–690–6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) proposes to adopt the common rule on nonprocurement debarment and suspension with a few amendments. The first proposed amendment would cover additional tiers of contracts below covered nonprocurement transactions. The

common rule as drafted includes automatic coverage for any contract at the first tier below a covered nonprocurement transaction, if the amount of the contract is expected to equal or exceed a threshold value of $25,000. It also includes an option for agencies to extend that coverage to lower tiers of contracts expected to equal or exceed the threshold value of $25,000. HHS proposes to extend coverage to lower tiers of contracts, but at a higher threshold value equal to the "simplified acquisition threshold" defined at 41 U.S.C. 403(11), which is currently set at $100,000. At final rulemaking, this proposed amendment would require a conforming change in the illustration at appendix A to the common rule, which shows the $25,000 threshold amount for optional coverage of lower tier contracts.

In addition, § 76.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under HHS transactions rather than written certifications. This alternative available under the common rule is more efficient than HHS's current certification process for prospective recipients and participants.

Section 76.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. HHS is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

In addition to the general regulatory language developed by the Interagency Committee on Debarment and Suspension to be used governmentwide, we are proposing to add clarifying language to the HHS nonprocurement common rule at 45 CFR part 76. This additional language reflects minor changes to address adequately the relationship of the HHS Office of Inspector General's (OIG) program exclusion authorities (42 U.S.C. 1320a–7) to the common rule, and the applicability of these exclusion authorities to participation in Executive branch procurement and nonprocurement programs. Accordingly, we are proposing the inclusion of the following additional language in 45 CFR part 76:

1. Adding a new § 76.230 in subpart B, Covered Transactions, that would address the relationship between covered transactions and Federal health care program exclusions under Title XI of the Social Security Act. Specifically, an individual or entity excluded by the OIG from Medicare, Medicaid and other Federal health care program participation would also be prohibited from participating in all other Federal Government procurement and nonprocurement programs.

2. Adding a new section in Subpart D, Responsibilities of Agency (HHS) Officials Regarding Transactions, that would address the obligations of Medicare carriers, intermediaries and other Medicare contractors. Specifically, proposed § 76.460 would state that these entities assume the same responsibilities and obligations for checking the GSA List as Medicare agency officials under this part.

3. Amending the proposed definition of the term "disqualified" in § 76.940 in Subpart I to include direct reference to the OIG exclusion authorities. The amended definition would indicate that an example of disqualifications include persons prohibited under the "* * * program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a-7) * * *" For purposes of exclusions from participation in Federal health care programs by the HHS OIG, the governing regulations are set forth in 42 CFR part 1001.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a new separate part 82.

List of Subjects

45 CFR Part 76

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 82

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 5, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

For the reasons stated in the common preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A as follows:

1. Part 76 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 76 is further amended as set forth below.

a. "[Agency noun]" is removed and "HHS" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "HHS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "HHS Debarring/Suspension Official" is added in its place wherever it occurs.

3. Section 76.220 is further amended by adding a paragraph (d) to read as follows:

§ 76.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is a subcontract at any tier below a procurement transaction that is covered under paragraph (a) of this section, and the value of the contract exceeds or is expected to exceed the "simplified acquisition threshold" defined at 42 U.S.C. 403(11). This extends the coverage of paragraph (a) of this section to all lower tiers of contracts that exceed the simplified acquisition threshold (see optional lower tier coverage shown in the diagram in the appendix to this part).

4. Section 76.230 is added to read as follows:

§ 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Any individual or entity excluded from participation in Medicare, Medicaid and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, will be subject to the prohibitions against participating in covered transactions, as set forth in this part. In addition, these excluded parties are also prohibited from participating in all Executive Branch procurement programs and activities. (Public Law 103–355, section 2455) For example, if an individual or entity is excluded by the HHS Office of Inspector General from participation in Medicare, Medicaid and all other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

5. Section 76.440 is added to read as follows:

§ 76.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

6. Section 76.460 is added to read as follows:

§ 76.460 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as Medicare agency officials with respect to actions under 45 CFR part 76. This would include these entities checking the GSA List and taking necessary steps to effectuate this part.

7. Section 76.940 is further amended by adding a paragraph (d) to read as follows:

§ 76.940 Disqualified.

* * * * *

(d) The program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a–7) and enforced by the HHS Office of Inspector General.

8. Section 76.995 is further amended by adding a paragraph (c) to read as follows:

§ 76.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in HHS covered transactions include:

(1) Principal investigators;

(2) Providers of Federally-required audit services; and

(3) Researchers.

9. Part 82 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of HHS Awarding Officials

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 41 U.S.C. 701 *et seq.*

10. Part 82 is further amended as set forth below.

a. "[Agency noun]" is removed and "HHS" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "HHS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "HHS Official or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Secretary of HHS" is added in its place wherever it occurs.

11. Section 82.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 76" in its place.

12. Section 82.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "45 CFR part 92" in its place.

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 620 and 630

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230, (703) 292–8060; e:mail: *aeisenst@nsf.gov.*

List of Subjects

45 CFR Part 620

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 630

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Lawrence Rudolph,

General Counsel, National Science Foundation.

Accordingly, as set forth in the common preamble, the National Science Foundation proposes to amend 45 CFR chapter VI as follows:

1. Part 620 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 620 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Science Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "National Science Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director or designee" is added in its place wherever it occurs.

3. Section 620.440 is added to read as follows:

§ 620.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 630 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 630—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*

5. Part 630 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Science Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "National Science Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director, National Science

Foundation" is added in its place wherever it occurs.

6. Section 630.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 620" in its place.

7. Section 630.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 602" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1154 and 1155

RIN 3135–AA18 and 3135–AA19

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 682–5418, or by e-mail: *eliask@arts.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Section 1154.440 of this part proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under NEA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the NEA's current reliance on the certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 45 CFR part 1154 to 45 CFR part 1155 and proposes to restate those requirements in plain language format.

List of Subjects

45 CFR Part 1154

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1155

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 28, 2001.

Karen L. Elias,

Deputy General Counsel, National Endowment for the Arts.

For the reasons stated in the preamble, the National Endowment for the Arts proposes to amend 45 CFR chapter XI as follows:

1. Part 1154 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 1154 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Endowment for the Arts" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEA Chairman" is added in its place wherever it occurs.

3. Section 1154.440 is added to read as follows:

§ 1154.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1155 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1155—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1155 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Endowment for the Arts" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEA Chairman" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "NEA Chairman" is added in its place wherever it occurs.

6. Section 1155.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1154" in its place.

7. Section 1155.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1157" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1169 and 1173

RIN 3136–AA25

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Assistant General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 530, Washington, DC, 20506, (202) 606–8322.

List of Subjects

45 CFR Part 1169

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1173

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

Laura S. Nelson,

Assistant General Counsel.

Accordingly, as set forth in the common preamble, 45 CFR chapter XI is proposed to be amended as follows.

1. Part 1169 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 959(a)(1).

2. Part 1169 is further amended as set forth below.

a. "[Agency noun]" is removed and "NEH" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEH" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

3. Section 1169.440 is added to read as follows:

§ 1169.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1173 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1173—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701, *et seq.*; 20 U.S.C. 959(a)(1).

5. Part 1173 is further amended as set forth below.

a. "[Agency noun]" is removed and "NEH" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEH" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

6. Section 1173.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1169" in its place.

7. Section 1173.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1174" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services

45 CFR Parts 1185 and 1186

RIN 3137–AA14

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506; Telephone: (202) 606–5414; E-mail: *nweiss@imls.gov.*

List of Subjects

45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1186

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: August 10, 2001.

Robert S. Martin,

Director, Institute of Museum and Library Services.

For the reasons stated in the preamble, the Institute of Museum and Library Services proposes to amend 45 CFR chapter XI as follows:

1. Part 1185 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 20 U.S.C. 9101 *et seq.*; Sec. 2455 Pub.L. 103–355, 108 Stat. 311867 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR,1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 1185 is further amended as set forth below:

a. "[Agency noun]" is removed and "Institute of Museum and Library Services" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "IMLS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Institute of Museum and Library Services" is added in its place wherever it occurs.

3. Section 1185.440 is added to read as follows:

§ 1185.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to

include a similar term or condition in lower-tier covered transactions.

4. Part 1186 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1186—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Institute of Museum and Library Services Awarding Officials

Subpart E—Violations of This Part and Consequences

Subpart F—Definitions

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1186 is further amended as set forth below.

a. "[Agency noun]" is removed and "Institute of Museum and Library Services" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "IMLS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Institute of Museum and Library Services or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director, Institute of Museum and Library Services" is added in its place wherever it occurs.

6. Section 1186.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1185" in its place.

7. Section 1186.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1183" in its place.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2542 and 2545

RIN 3045–AA28

FOR FURTHER INFORMATION CONTACT: Suzanne Dupré, Office of General Counsel, Corporation for National and Community Service, Room 8200, 1201 New York Ave., NW., Washington, DC 20525, (202) 606–5000 ext. 396, e-mail: *sdupre@cns.gov.*

List of Subjects

45 CFR Part 2542

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 2545

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: May 31, 2001.

Wendy Zenker,

Chief Operating Officer, Corporation for National and Community Service.

Accordingly, as set forth in the common preamble, the Corporation for National and Community Service proposes to amend 45 CFR chapter XXV as follows:

1. Part 2542 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

Authority: 42 U.S.C. 12651(c); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C.

6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 2542 is further amended as set forth below.

a. "[Agency noun]" is removed and "Corporation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Corporation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Corporation Chief Executive Officer or designee" is added in its place wherever it occurs.

3. Section 2542.440 is added to read as follows:

§ 2542.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 2545 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
2545.100 What does this part do?
2545.105 Does this part apply to me?
2545.110 Are any of my Federal assistance awards exempt from this part?
2545.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

2545.200 What must I do to comply with this part?
2545.205 What must I include in my drug-free workplace statement?
2545.210 To whom must I distribute my drug-free workplace statement?
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Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 12644 and 12651(c).

5. Part 2545 is further amended as set forth below.

a. "[Agency noun]" is removed and "Corporation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Corporation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Corporation Chief Executive Officer or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Corporation Chief Executive Officer" is added in its place wherever it occurs.

6. Section 2545.510(c) is further amended by removing "[CFR citation for the Federal Agencies' regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 2542" in its place.

7. Section 2545.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 2541" in its place.

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 29 and 32

RIN 2105–AD07

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Office of the Senior Procurement Executive (M–62), 400 Seventh Street SW., Washington, DC 20590, (202) 366–4268, e-mail: *ladd.hakes@ost.dot.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes additional debarment and suspension exception authority by including a paragraph (c) in § 29.120 to allow any DOT debarring or suspending official to grant exceptions and make written determinations under that section. In addition, § 29.440 proposes to use terms or conditions to the award transactions as a means to enforce exclusions under DOT transactions rather than written certifications. This alternative available under the common rule is more efficient that DOT's current certification process for prospective recipients and participants. This part also proposes to add a paragraph (d) to § 29.520 requiring DOT officials, when providing information to GSA, to include their Operating Administration identifying code. This part also proposes to add a paragraph (b) to the definitions of a "debarring official" at § 29.935 and "suspending official" at § 29.1010 to include the head of a Departmental operating administration, with downward delegation authority. Finally, this proposed rule relocates the requirements for maintaining a drug-free workplace from 49 CFR part 29 to 49 CFR part 32.

List of Subjects

49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

49 CFR Part 32

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: November 2, 2001.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons stated in the common preamble, the Department of Transportation proposes to amend 49 CFR chapter I, as follows:

1. Part 29 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
29.25 How is this part organized?
29.50 How is this part written?
29.75 Do terms in this part have special meanings?

Subpart A—General

29.100 What does this part do?
29.105 Does this part apply to me?
29.110 What is the purpose of the nonprocurement debarment and suspension system?

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O.11738 (3 CFR, 1973 Comp., p.799); E.O.12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 29 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Transportation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOT" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "debarring or suspending official" is added in its place wherever it occurs.

3. Section 29.120 is further amended by adding a paragraph (c) to read as follows:

§ 29.120 May we grant an exception to an excluded person to participate in a covered transaction?

* * * * *

(c) A debarring or suspending official may grant exceptions and make written determinations under this section.

4. Section 29.440 is added to read as follows:

§ 29.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

5. Section 29.520 is further amended by removing the period at the end of paragraph (c)(4) and adding a semicolon, and adding a paragraph (d) to read as follows:

§ 29.520. Who gives the GSA the information that it puts on the List?

* * * * *

(d) The DOT official's Operating Administration code, as follows: United States Coast Guard [DOT–USCG]; Federal Aviation Administration [DOT–FAA]; Federal Highway Administration [DOT–FHWA]; Federal Motor Carrier Safety Administration [DOT–FMCSA]; Federal Railway Administration [DOT–FRA]; Federal Transit Administration [DOT–FTA]; National Highway Traffic Safety Administration [DOT–NHTSA]; Research and Special Programs [DOT–RSPA]; Maritime Administration [DOT–MARAD]; and DOT (general) [DOT–OST].

6. Section 29.935 is further amended by adding a paragraph (b) to read as follows:

§ 29.935 Debarring official.

* * * * *

(b) For DOT "debarring official" means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

7. Section 29.1010 is further amended by adding a paragraph (b) to read as follows:

§ 29.1010 Suspending official.

* * * * *

(b) For DOT "suspending official" means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

8. Part 32 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 32—GOVERNMENTWIDE REQUIREMENTS FOR DRUG–FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701 *et seq.*

9. Part 32 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Transportation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOT" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Transportation" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Transportation" is added in its place wherever it occurs.

10. Section 32.510 (c) is further amended by removing "CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689" and adding "49 CFR part 29" in its place.

11. Section 32.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "49 CFR part 18" in its place.

[FR Doc. 02–1 Filed 1–22–02; 8:45 am]

BILLING CODES 6325–01, 3410–KS, 6450–01, 8025–01, 7510–01, 3510–FA, 4191–02, 3180–02, 4710–05, 6116–01, 6051–01, 7025–01, 6117–01, 4510–23, 6732–01, 5001–08, 4000–01, 7515–01, 8320–01, 6560–50, 6820–61, 4310–RF, 6718–01, 4150–24, 7555–01, 7537–01, 7536–01, 7036–01, 6050–28, 4910–62P

Federal Register

Wednesday,
January 23, 2002

Part III

Environmental Protection Agency

40 CFR Parts 9 and 434
Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 434

[FRL–7125–4]

RIN 2040–AD24

Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the current regulations for the Coal Mining Point Source Category by adding two new subcategories to the existing regulation. EPA is establishing a Coal Remining Subcategory that will address pre-existing discharges at coal remining operations. EPA also is establishing a Western Alkaline Coal Mining Subcategory that will address drainage from coal mining reclamation and non-process areas in the arid and semiarid western United States. These amendments do not otherwise change the existing regulations.

The establishment of new subcategories has the potential to create significant environmental benefits at little or no additional cost to the industry. Establishing the Coal Remining Subcategory will encourage remining activities and will reduce hazards associated with abandoned mine lands. The new subcategory has the potential to significantly improve water quality by reducing the discharge of acidity, iron, manganese, and sulfate from abandoned mine lands. EPA projects total monetized annual benefits of $0.7 million to $1.2 million due to remining. Additionally, EPA expects that this regulation will result in significant ecological and public safety benefits that could not be quantified and/or monetized. EPA projects that the annual compliance cost for this new subcategory will be $0.33 million to $0.76 million.

EPA estimates that the Western Alkaline Coal Mining Subcategory will result in a net cost savings to affected surface mine operators. The monetized and non-monetized benefits for this subcategory are a result of adopting alternative sediment control technologies for reclamation and non-process areas in the arid west. These technologies are projected to increase the volume of storm water drainage to arid watersheds and avoid the disturbance of approximately 600 acres per year, thus reducing severe erosion, sedimentation, hydrologic imbalance, and water loss. EPA projects that the subcategory will result in annualized monetized benefits of $0.04 to $0.75 million.

DATES: This regulation is effective February 22, 2002.

ADDRESSES: A copy of the supporting documents cited in this document are available for review at EPA's Water Docket; Room EB57, 401 M Street, SW, Washington, DC 20460. A copy of the record supporting the development of the Western Alkaline Coal Mining Subcategory is also available for review at the Office of Surface Mining Library, 1999 Broadway, 34th Floor, Denver, CO. The public record for this rulemaking has been established under docket number W–99–13, and includes supporting documentation. The public record supporting this rule does not include any information claimed as Confidential Business Information (CBI). For access to EPA docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m Eastern Standard Time, Monday through Friday, excluding Federal holidays, to schedule an appointment. For access to docket materials at the Office of Surface Mining Library, please call (303) 844–1436 between 8 a.m. and 4 p.m. Mountain Standard Time to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact William Telliard at (202) 260–7134 or "*Telliard.William@EPA.gov*". For additional economic information contact Kristen Strellec at (202) 260–6036 or "*Strellec.Kristen@EPA.gov*".

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities potentially regulated by this action include:

Category	Examples of regulated entities	SIC codes	NAICS codes
Industry	Operations engaged in the remining of abandoned surface and underground coal mines and coal refuse piles for remaining coal reserves in areas containing discharges defined as "pre-existing" Operations engaged in coal mine reclamation activities in the arid and semiarid western coal region..	1221 1222 1231	212111 212112 212113

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 434. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

In accordance with 40 CFR 23.2, this rule will be considered promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on February 6, 2002. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered promulgated for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Compliance Dates

Existing direct dischargers must comply with limitations based on the Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), and Best Available Technology Economically Achievable (BAT) as soon as their National Pollutant Discharge Elimination System (NPDES) permits include such limitations. The compliance date for New Source Performance Standards (NSPS) is the date the new source commences discharging.

Supporting Documentation

The regulations are supported by several key documents:

1. "*Coal Remining Best Management Practices Guidance Manual*" (EPA 821–B–01–010). This document describes abandoned mine land conditions and the performance of Best Management Practices (BMPs) that have been implemented at remining operations. The BMP Guidance Manual is a technical reference document that presents research and data concerning the prediction and prevention of acid mine drainage to the waters of the United States. There have been minimal changes to the BMP manual since proposal.

2. "*Coal Remining Statistical Support Document*" (EPA 821–B–01–011). This document describes the statistical methodology for establishing and monitoring baseline conditions and setting discharge limits at remining sites.

3. "*Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory*" (EPA 821–B–01–012): This document presents EPA's technical conclusions concerning the Western Alkaline Coal Mining Subcategory.

4. "*Economic and Environmental Impact Assessment of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories*" (EPA–821–B–01–013): This document presents the methodology employed to assess economic and environmental impacts of the final rule and the results of the analysis.

5. *Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load.* (EPA 821–B–01–014) This document describes pollutant characteristics of pre-existing discharges at abandoned mine lands.

How To Obtain Supporting Documents

All documents are available from the National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242, (800) 490–9198, *http://www.epa.gov/ncepi*. Several of these documents can also be obtained on the Internet, located at *http://www.epa.gov/OST/guide/coal*. This website also links to an electronic version of today's notice.

Table of Contents

I. Legal Authority

These regulations are promulgated under the authority of sections 301, 304, 306, 308, 402, 501, and 502 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361, and 1362.

II. Background

A. Statutory Authorities

1. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the

chemical, physical, and biological integrity of the Nation's waters' (section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is in establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial and public sources of wastewater.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

a. Best Practicable Control Technology Currently Available (BPT)—section 304(b)(1) of the CWA. Effluent limitations guidelines based on BPT apply to discharges of conventional, toxic, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance in terms of pollution control by plants in a particular industrial category or subcategory. In establishing BPT, EPA considers the cost of achieving pollution reductions in relation to the pollution reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. Where the pollution control performance of existing sources for a category or subcategory is uniformly inadequate, EPA may set BPT by transferring technology used in a different subcategory or category.

b. Best Available Technology Economically Achievable (BAT)—section 304(b)(2) of the CWA. In general, BAT effluent limitations guidelines are based on the degree of pollution control achievable by applying the best available technology economically achievable for facilities in the industrial subcategory or category. The CWA requires BAT for controlling the direct discharge of toxic and non-conventional pollutants. The factors considered in determining BAT for a category or subcategory include the age of the equipment and facilities involved, the process employed, potential process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. EPA retains considerable discretion in assigning the weight to be accorded these factors. Generally, economic achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry's (or subcategory's) financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, such as product substitution, even when these technologies are not common industry practice. The CWA does not require cost-benefit comparison in establishing BAT.

c. Best Conventional Pollutant Control Technology (BCT)—section 304(b)(4) of the CWA. The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from point sources other than publicly owned treatment works. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

d. New Source Performance Standards (NSPS)—section 306 of the CWA. NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—section 307(b) of the CWA—and Pretreatment Standards for New Sources (PSNS)—section 307(b) of the CWA.

Pretreatment standards are designed to prevent the discharge of pollutants to a publicly-owned treatment works (POTW) which pass through, interfere, or are otherwise incompatible with the operation of the POTW. Since none of the facilities to which this rule applies discharge to a POTW, pretreatment standards are not part of this rulemaking.

f. CWA section 304(m) Requirements. Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On January 2, 1990 (55 FR 80), EPA published an Effluent Guidelines Plan, which established schedules for developing new and revised effluent guidelines for several industry categories. The Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia (*NRDC* v. *Browner*, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which established schedules for EPA's proposal of and final action on effluent guidelines for a number of point source categories. The Effluent Guidelines Plan published in the **Federal Register** on September 4, 1998 (63 FR 47285) required, among other things, that EPA propose the Coal Mining Effluent Guidelines by December 1999 and take final action on the Guidelines by December 2001. On November 19, 1999, the Court modified the decree revising the deadline for proposal to March 31, 2000. The deadline of December 2001 for taking final action on these guidelines was not modified.

2. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101 (b)). In

short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

The PPA directs EPA to, among other things, "review regulations of the EPA prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). Source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. * * * The term source 'reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service" (42 U.S.C. 13102(5)). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In today's rule, EPA encourages pollution prevention by requiring the use of site-specific Best Management Practices (BMPs) that are integral to remining operations in abandoned mine lands and to reclamation activities in the arid and semiarid western coal regions. These BMPs, under each subcategory, are designed and implemented to improve existing conditions and to reduce pollutant discharges at the source, thereby reducing the need for treatment.

B. Regulation of the Coal Mining Point Source Category

1. EPA Regulations at 40 CFR Part 434

On October 9, 1985 (50 FR 41296), EPA promulgated effluent limitations guidelines and standards that are in effect today under 40 CFR part 434. Prior to today's rule, there were four subcategories: Coal Preparation Plants and Coal Preparation Plant Associated Areas; Acid or Ferruginous Mine Drainage; Alkaline Mine Drainage; and Post-Mining Areas. Additionally, there is a subpart for Miscellaneous Provisions. The subcategories include BPT, BAT, and NSPS limitations for TSS, pH, iron, manganese, and/or settleable solids (SS).

2. Surface Mining Control and Reclamation Act

In 1977, Congress enacted the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 *et seq*, to address the environmental problems associated with coal mining on a nationwide basis. SMCRA created the Office of Surface Mining Reclamation and Enforcement (OSMRE) within the Department of Interior, which is responsible for preparing regulations and assisting the States financially and technically to carry out regulatory activities.

Title V of the statute gives OSMRE broad authority to regulate specific management practices before, during, and after mining operations. OSMRE has promulgated comprehensive regulations to control both surface coal mining and the surface effects of underground coal mining (30 CFR parts 700 *et seq*). Implementation of these requirements has significantly improved mining practices, control of water pollution, and protection of other resources. Title IV of SMCRA addresses the problem of presently abandoned coal mines by authorizing and funding abandoned mine reclamation projects.

All mining operations subject to today's regulation must also comply with SMCRA requirements. EPA has worked extensively with OSMRE in the preparation of this rule in order to ensure that today's requirements are consistent with OSMRE requirements.

3. Rahall Amendment

As part of the 1987 amendments to the CWA, Congress added Section 301(p), often called the Rahall Amendment, to provide incentives for remining abandoned mine lands that pre-date the passage of SMCRA in 1977. Section 301(p) provides an exemption for remining operations from the BAT effluent limits for iron, manganese, and pH for pre-existing discharges from abandoned mine lands. Instead, a permit writer may set site-specific, numerical BAT limits for pre-existing discharges based on Best Professional Judgement (BPJ). The effluent limits may not allow discharges to exceed pre-existing "baseline" levels of iron, manganese, and pH. In addition, the permit applicant must demonstrate that the remining operation "will result in the potential for improved water quality from the remining operation." The Rahall Amendment defines remining as a coal mining operation which began after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977, which was the effective date of SMCRA. Thus, the Rahall Amendment attempted to encourage remining by no longer requiring operators to treat degraded pre-existing discharges to the BAT levels established in Subpart C of 40 CFR part 434.

Despite the statutory authority provided by the Rahall Amendment, coal mining companies remained hesitant to pursue remining without formal EPA approval and guidelines. Today's regulation establishes requirements for determining baseline pollutant loadings in pre-existing discharges. It also specifies how to determine site-specific BAT requirements for remining operations and how to demonstrate the potential for environmental improvement from a remining operation. EPA is today promulgating a regulation that is consistent with, but not identical to, the Rahall Amendment.

C. Proposed Rule

On April 11, 2000 (65 FR 19440), EPA published proposed amendments to effluent limitations guidelines and new source performance standards for the coal mining point source category. EPA proposed adding two new subparts to the existing regulations at 40 CFR part 434 applicable to Coal Remining (subpart G) and Western Alkaline Coal Mining (subpart H).

In the proposal, EPA solicited comment on 18 specific areas identified by the Agency, in addition to a general comment solicitation on all aspects of the proposed regulation. During the comment period, EPA held public meetings in three locations in the western coal mining region (Denver, CO; Gillette, WY; and Flagstaff, AZ) and three public meetings in areas affected by remining (Nitro, WV; Frankfort, KY; and Zanesville, OH) to explain the proposal and to solicit comment.

On July 30, 2001 (66 FR 39300), EPA published a Notice of Data Availability (NODA) to provide a discussion of options relating to two issues raised by commenters on the Coal Remining Subcategory that were not presented in the proposal. EPA presented these comments, data collected since the proposal, and options being considered for the final rulemaking in the notice and solicited comment on: (1) The expansion of applicability of the Coal Remining Subcategory to sites abandoned after 1977, and (2) alternative effluent limits for solids in pre-existing discharges. The majority of comments received supported these proposed changes. In Section XII of this document, EPA presents a summary of the significant comments received on the proposal and NODA and a summary of the Agency's responses. The complete

set of comments and EPA's detailed responses can be found in the "Comment Response Document for the Coal Remining and Western Alkaline Coal Mining Subcategories" (DCN 3056).

III. Summary of Significant Changes to Proposed Rule

Based on comments received, EPA has made several changes to the proposed subcategory applicability, regulated parameters, and statistical methodology presented in the April 11, 2000 **Federal Register** notice. EPA has summarized these changes below, and is presenting its rationale for these changes in Sections V and VI of this document.

A. Coal Remining Subcategory

- At proposal, EPA defined a remining operation as a coal mining operation at a site on which coal mining was conducted prior to August 3, 1977. EPA has modified the definition of "remining" to include coal mining operations on sites where coal mining was previously conducted and where the site was abandoned or the performance bond forfeited after August 3, 1977. The rationale for these changes is provided in Section V of this document.
- EPA proposed to establish alternative effluent limitations for pH, iron, and manganese. EPA has modified the pollutants to be regulated by setting limits for net acidity instead of pH, and by establishing alternative limitations for sediment such that solids loads cannot be increased over baseline during remining and reclamation activities, but must meet standards for post-mining areas prior to bond release. The rationale for this decision is described in Section VI.D of this document.
- For pre-existing discharges where it is infeasible to determine baseline conditions for discharge monitoring, EPA is providing an exclusion from numeric standards. In these cases, the coal mining operator will be required to implement a pollutant abatement plan. The rationale for this decision is described in Section V of this document.
- For the calculation and monitoring of numeric limitations in pre-existing discharges, EPA has made several changes to the statistical methodology. Further information on the statistical procedures is described in sections VI.A and VI.B of this document and in Appendix B of the final regulation.

B. Western Alkaline Coal Mining Subcategory

- In the proposal, EPA limited the application of the Western Alkaline Coal Mining Subcategory requirements to "reclamation areas" but solicited comment on the possibility of expanding the scope of coverage to include other areas. EPA received significant comment on the use of alternative sediment controls for non-process runoff at mine sites subject to the Western Alkaline Coal Mining Subcategory. Based on comments received, EPA has revised the applicability of the subcategory to allow the use of alternative sediment controls on runoff from some non-process areas of western coal mines. This allowance is discussed in Section V.B of this document.
- At proposal, EPA calculated the costs and benefits based on a model mine run for conditions present in the desert southwest. This model represented the "worst case" scenario (in that runoff in the desert southwest contains the highest sediment loadings in the western alkaline coal regions) in order to demonstrate that alternative sediment controls can be used effectively to control sediment to below pre-mined, undisturbed conditions in the arid west. For the final regulation, EPA incorporated the results for two additional model mines representing the "intermountain" and "northern plains" regions. The changes in EPA's estimates of cost savings and benefits are the result of using three different model mines to represent three different types of conditions present in the arid west. The results of these changes are presented in Sections VIII and IX of this document.

IV. Scope of Final Regulation

Today, EPA is promulgating effluent limitations and performance standards for the Coal Remining Subcategory and for the Western Alkaline Coal Mining Subcategory. The new subcategories will be added to the existing regulations for the Coal Mining Point Source Category found at 40 CFR part 434. The new subcategories will create a set of standards and requirements for the specific waste streams defined in the final regulation. The new subcategories will not otherwise change the existing regulations.

A. Coal Remining Subcategory

The effluent limitations and standards for the Coal Remining Subcategory apply to pre-existing discharges that are located within, or that are hydrologically connected to, pollution abatement areas of a coal remining operation.

EPA proposed to define coal remining as the mining of surface mine lands, underground mine lands, and coal refuse piles that were abandoned prior to the enactment of the Surface Mining Reclamation and Control Act (August 3, 1977), consistent with the language of the Rahall Amendment to the Clean Water Act. However, due to the anticipated benefits of the remining subcategory, EPA received comment on the proposal requesting that EPA extend the applicability of the Remining Subcategory to mine lands that have been abandoned since August 3, 1977. In response to this comment, EPA published a Notice of Data Availability (NODA) to solicit further comment on the issue, including whether to limit applicability to mine lands abandoned before the effective date of today's rule. As described in the NODA, it is estimated that there are currently 260 bond forfeiture sites producing acid mine drainage.

EPA concluded that remining of abandoned mine lands (AML) has many potential benefits, and has decided to extend the applicability of the subcategory to mine lands that are abandoned after August 3, 1977. EPA also concluded that there is no basis for precluding applicability of today's rule to AML abandoned after the effective date of today's rule. Based on comments received from regulatory authorities, EPA does not believe that this change will create an incentive for future bond forfeitures. As noted by commenters, once a coal operator has abandoned an active permit and forfeited the performance bond, there are safeguards that prevent the operator from being allowed to mine in the future. Upon forfeiture of the bond, no portion of the bond would be returned until the site meets all the standards of the operator's permit, including the applicable effluent limitations. Secondly, SMCRA provides an avenue to pursue additional monies and to place additional liabilities upon an operator if the bond is insufficient to complete total reclamation. This includes barring the operator from receiving any other SMCRA permits until reclamation is completed, penalties are paid, and any outstanding liabilities are resolved.

The provisions of this new subpart apply only to pre-existing discharges and do not apply to discharges produced or generated in active mining areas, which include the active mining areas of remining operations. Section 434.11(b) defines active mining area as "the area, on and beneath land, used or disturbed in activity related to the

extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas." Wastewater discharges produced or generated by active coal mining operations will remain subject to the effluent limitations already established in part 434, Subpart C—Acid or Ferruginous Mine Drainage or Subpart D—Alkaline Mine Drainage.

Additionally, in accordance with § 434.61, any waste stream subject to this rule that is commingled for treatment or discharge with a waste stream subject to another subpart of part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream. However, EPA would like to further clarify this statement of applicability for the Coal Remining Subcategory. For the reasons discussed in the proposal, a waste stream that is intercepted and/or commingled with active mining wastewater during remining is subject to the provisions of § 434.61. However, § 434.61 applies to the commingled waste stream only during the time when the pre-existing discharge is intercepted by active mining or is combined with active mine wastewater for treatment or discharge. After commingling has ceased, the pre-existing discharge remains subject to the provisions established by the Coal Remining Subcategory.

B. Western Alkaline Coal Mining Subcategory

Today's rule establishes effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory applicable to alkaline mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas at western coal mining operations. "Western coal mining operation" is defined as a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less. "Alkaline mine drainage" is defined as "mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L." The Western Alkaline Coal Mining Subcategory may also apply to drainage where the total iron concentration is greater than 10 mg/L, provided that the discharge, before any treatment, has a pH equal to or greater than 6.0, and a dissolved iron concentration less than 10 mg/L; and a net alkalinity greater than zero.

The regulation applies to the following areas:

- "Reclamation area" is the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
- "Brushing and grubbing area" is the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
- "Topsoil stockpiling area" is the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
- "Regraded area" is the surface area of a coal mine which has been returned to required contour.

The provisions in Subpart D—Alkaline Mine Drainage will continue to apply to discharges produced or generated in active mining areas. Section 434.11(b) defines active mining area as "the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas." Wastewater discharges produced or generated by active coal mining operations will not be affected by this regulation and will remain subject to the effluent limitations already established in part 434.

Additionally, in accordance with § 434.61, any waste stream subject to this rule that is commingled with a waste stream subject to another subpart of part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream. Today's new rule simply maintains this regulatory approach.

V. Development of Final Effluent Limitations Guidelines

In this section, EPA describes the rationale for the development of the final limitations and guidelines being promulgated today. For more detailed information on the profile of the industry, please see section IV, "Industry profile," in the April 11, 2000 proposal. For more detailed information on the data gathering efforts used to support this regulation, please see section V, "Summary of data gathering efforts," in the proposal.

A. Coal Remining Subcategory

1. Background

Coal remining is the mining of surface mine lands, underground mine lands, and coal refuse piles that have been previously mined. Acid mine drainage from abandoned coal mines is damaging a significant number of waterways in the Appalachian and mid-continent coal regions of the eastern United States. Information gathered from the Interstate Mining Compact Commission (IMCC) and the Office of Surface Mining and Regulatory Enforcement (OSMRE) Abandoned Mine Land Inventory System indicates that there are over 1.1 million acres of abandoned coal mine lands and over 9,709 miles of streams polluted by acid mine drainage in Appalachia alone. As discussed in the proposal, EPA recognizes that one of the most successful means for improvement of abandoned mine land is for coal mining companies to remine abandoned areas and extract the coal reserves that remain. EPA also recognizes that if abandoned mine lands are ignored during mining of adjacent areas, a time-critical opportunity for reclaiming the abandoned mine land is lost. Once coal mining operations have ceased on the adjacent areas, there is little incentive for operators to return.

During remining operations, acid-forming materials are removed with the extraction of the coal, pollution abatement Best Management Practices (BMPs) are implemented to control acid-forming materials and sediment, and the abandoned mine land is reclaimed. During remining, many of the problems associated with abandoned mine land, such as dangerous highwalls, vertical openings, and abandoned coal refuse piles can be corrected without using public funds from OSMRE's Abandoned Mine Land Program. Furthermore, implementation of appropriate BMPs during remining operations can be effective at improving the water quality of pre-existing discharges. For example, implementation of appropriate BMPs during 112 remining operations in Pennsylvania has been effective in improving or eliminating acidity loading in 45 percent of the pre-existing discharges, total iron loading in 44 percent of the discharges, and total manganese in 42 percent of the discharges. This improvement has resulted in reduced annual pollutant loadings of up to 5.8 million pounds of acidity, 189,000 pounds of iron, 11,400 pounds of manganese, and 4.8 million pounds of sulfate. The environmental benefits associated with reclamation of abandoned mine lands are discussed further in Section VIII of this document.

The current regulations at 40 CFR part 434 create a disincentive for remining because of their high compliance costs. Moreover, the potential of the statutory exemption contained in the Rahall Amendment to overcome this disincentive and derive the maximum environmental benefits from remining operations has not been fully realized in the absence of implementing regulations. If mining companies face substantial potential liability or economic loss from remining, they will continue to focus on mining virgin areas and ignore abandoned mine lands that may contain significant coal resources. Based on information collected in support of this regulation, EPA believes that remining operations are environmentally preferable to ignoring the coal resources in abandoned mine lands.

As described in Section II of this document, Congress attempted to address the problems associated with discharges from abandoned mine lands by passing the Rahall Amendment to provide incentives to encourage coal remining. The Rahall Amendment (CWA section 301(p)) allows permitting authorities to issue NPDES permits for remining sites with different requirements than those in the existing regulations for some pollutant limits. Specifically, section 301(p) allows permit writers to use best professional judgement (BPJ) to set site-specific BAT limits determined for pre-existing discharges. These limits may not exceed baseline levels of iron, manganese, and pH. The operator must also demonstrate that the remining operation will result in the potential for improved water quality. The statute does not specify how to determine site-specific BAT, baseline pollutant discharge levels, or the potential for improved water quality and has left these up to each permitting authority to determine.

Between 1987 (date of enactment of Rahall Amendment) and 1999, seven States established formal remining programs that issued approximately 330 Rahall permits with numeric limits for pre-existing discharges that are less stringent than those in the existing regulations. Of these 330 Rahall remining permits, 300 were issued by the Commonwealth of Pennsylvania. The remaining thirty Rahall permits were issued by Alabama, West Virginia, Kentucky, Virginia, Ohio, and Maryland. Under these Rahall permits, remining operations must meet the alternate baseline numeric limits specified in the permits and must implement site-specific BMPs. These BMPs include special handling of acid-producing materials, daylighting of abandoned underground mines, control of surface water and ground water, control of sediment, addition of alkaline material, and passive treatment. Remining operations currently underway have proven to be a viable means of remediating the environmental conditions associated with abandoned mine lands without imposing a significant cost burden on industry (Skousen, *Water Quality Changes and Costs of Remining in Pennsylvania and West Virginia*, 1997).

A discussion paper released by IMCC, EPA and OSMRE in February 1998 (Discussion Paper on Water Quality Issues Related to Remining) presented an alternative BMP-based remining permit approach where implementation of BMPs would be the central focus of permitting. This alternative would not impose any numeric limits for pre-existing discharges, but would require implementation of selected BMPs. The IMCC Remining Task Force believes that BMPs can result in improved water quality and, in certain cases, can qualify as BAT for achieving standards required by the Clean Water Act. EPA has considered conditions under which remining permits based solely on BMP implementation in lieu of numeric effluent limits may be appropriate. In addition, EPA recently accepted a Coal Remining and Reclamation Project XL agreement from the Pennsylvania Department of Environmental Protection. Once completed, this pilot project is expected to provide a substantial amount of data about remining BMPs in eight different watersheds throughout Pennsylvania.

2. Scope of Final Regulation

EPA is today promulgating a new remining subcategory with effluent limitations guidelines based on a combination of numeric limits and non-numeric BMP requirements. EPA is also allowing effluent limits based on BMP only requirements where numeric monitoring of a baseline pre-existing discharge is infeasible. EPA is establishing a standardized procedure for determining pollutant loadings for baseline and for compliance monitoring. This procedure is described in Appendix B of the regulation and in chapter 3 of the *Coal Remining Statistical Support Document*. Example calculations using these procedures and further discussion of EPA's determination of these procedures are provided in the support document. EPA intends these regulations to control pre-existing discharges at remining operations in a manner consistent with, but not identical to, requirements under the Rahall Amendment. These requirements are effluent limitations guidelines authorized under section 304(b) of the CWA, but are also in effect implementing regulations for section 301(p), providing EPA's interpretation of of the intent of that provision. Section 301(p) requires the permit authority to establish BAT on a case-by-case basis, using best professional judgment to set specific numeric effluent limitations for pH, iron, and manganese in each permit. Section 301(p) requires the operator to demonstrate that the coal remining operation will result in the potential for improved water quality, and in no event may pH, iron, or manganese discharges exceed the levels discharged prior to the remining operation.

Under the final regulations, the permit will contain specific numeric and non-numeric requirements, constituting BPT, BCT, BAT and NSPS. The numeric requirements will be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline. The numeric effluent limitations set at baseline levels will ensure that the pollutant discharges do not exceed the pollutant levels in the discharges prior to remining consistent with section 301(p)(2).

The extent of the non-numeric permit provisions will be established using best professional judgement to evaluate the adequacy of the selected BMPs contained in a pollution abatement plan to improve conditions of the abandoned mine lands. The pollution abatement plan must demonstrate that the remining operation has the potential to improve water quality, consistent with section 301(p)(2). Together, the numeric and non-numeric requirements constitute BPT, BCT, BAT and NSPS.

3. Pollution Abatement Plan

In the regulatory text, EPA has included a qualitative description of the pollutant abatement plan that must be developed. The regulation requires an operator to prepare a pollution abatement plan that identifies the characteristics of the remining area and the pre-existing discharges at the site, identifies design specifications for selected BMPs, and includes periodic inspection and maintenance schedules. The pollution abatement plan must demonstrate that there is a potential for water quality improvement. These requirements are intended to help the permitting authority evaluate the efficacy of the plan in relation to the conditions existing at the site. EPA has provided a support document, the *Coal Remining BMP Guidance Manual*, to assist industry and permitting

authorities in the development and implementation of the pollution abatement plan. EPA and OSMRE plan to sponsor guidance workshops for the States and Tribes on implementation issues and approaches to maximize efficiency and eliminate possible duplication with respect to requirements in the final rule and SMCRA permitting requirements. Upon review of the permit application, it is within the discretion of the regulatory authority to determine whether additional or more intensive BMPs than those identified in an applicant's proposed plan are required.

The SMCRA permit application process requires a coal mining operator to submit an extensive operation and reclamation plan, documentation, and analysis to OSMRE or the primacy permitting authority for approval. The requirements for the operation and reclamation plan are specified in 30 CFR part 780 for surface mining permit applications and part 784 for underground mining permit applications. In brief summary, some of the OSMRE requirements that directly relate to this CWA regulation include requirements for coal mining operators to provide: a description of coal mining operations; a plan for reclaiming mined lands; a plan for revegetating mined lands; geologic information; hydrologic information including: a description of baseline ground water and surface water characteristics under seasonal conditions; and an analysis of the hydrologic impacts caused by the mining activity. Specifically, the plan must include a "probable hydrologic consequences (PHC)" determination to determine the impacts of the mining on existing hydrologic conditions and a hydrologic reclamation plan to show measures for reducing impacts and to meet water quality laws and regulations. Furthermore, the coal mining regulatory authority is required to conduct a cumulative hydrologic impact analysis of the proposed operation and all anticipated mining on surface water and ground water systems.

EPA believes that many requirements for the pollution abatement plan will be contained in the operations and reclamation sections of an approved SMCRA permit. However, EPA or the State NPDES permitting authority will retain the authority to require additional or expanded BMPs as necessary to ensure that implementation of the identified BMPs is consistent with Clean Water Act requirements. The permitting authority will evaluate the adequacy of the plan as part of its evaluation of whether the permit application is complete, pursuant to 40 CFR 124.3(c).

EPA is also requiring that this pollution abatement plan be developed to the extent practicable for the entire "pollution abatement area," defined as the area that is causing or contributing to the baseline pollution load of the pre-existing discharge. The pollution abatement area shall include the part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

Commenters suggested that the definition of pollution abatement area be modified to include "adjacent and nearby areas that must be affected to reduce pollution load." EPA agrees with commenters that the additional flexibility afforded by today's rule is needed to identify the entire pollution abatement area within which BMPs can affect improvement in water quality. EPA believes that this will further the intent of today's regulation by focusing on those areas that must be affected to achieve improved water quality. In this manner, the regulatory authority may require a different or larger permit boundary in order to demonstrate the potential for improvement in water quality, or to develop a holistic approach for water quality improvement in the context of related SMCRA programs such as the Acid Mine Drainage Treatment and Abatement Fund or the Title IV Abandoned Mine Reclamation Program. This definition reflects the often complex hydrologic relationships between discharges within or emanating from a permit area and those which originate on adjacent or nearby sites but which may affect pollution loadings on the permit site. This is also consistent with the definition in Pennsylvania's remining program (25 Pa. Code section 87.202).

EPA has defined a pre-existing discharge as "any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application." EPA has modified the definition of pre-existing discharge from the proposal to address issues raised by commenters.

4. Pollution Abatement Plan and Passive Treatment

EPA received comments from stakeholders concerned that coal mining operators may be held perpetually liable for maintaining certain passive treatment technologies installed during the remining process. As discussed in section 4.0 of the *Coal Remining BMP Guidance Manual,* passive treatment encompasses a series of engineered treatment practices that require very little or no maintenance once constructed and operational. Passive water treatment generally involves natural physical, biochemical, and geochemical actions and reactions, such as calcium carbonate dissolution, sulfate/iron reduction, bicarbonate alkalinity generation, metals oxidation and hydrolysis, and metals precipitation. The systems are commonly powered by existing water pressure created by differences in elevation between the discharge point and the treatment facilities. Passive treatment technologies discussed in the *Coal Remining BMP Guidance Manual* include: limestone drains, constructed wetlands, successive alkalinity-producing systems, open limestone channels, Pyrolusite® systems, and alkalinity-producing diversion wells.

However, passive treatment may not meet the standard definition of a BMP. In general, BMPs consist of abatement, remediation, and/or prevention techniques that are conducted within the mining area during active remining operations.

Passive treatment, by its nature, is commonly accepted as an end-of-the-pipe solution to an existing source of acid mine drainage (AMD). A passive treatment system is designed to be a self-sustaining system that relies on chemical or biological processes that should require no external reagents, maintenance, or support to treat AMD. BMPs, on the other hand, may be performed as part of the mining or reclamation process to eliminate or prevent the formation of AMD. For example, EPA considers the application of lime to the overburden to be a BMP and not passive treatment.

Stakeholders expressed concern that the language concerning bond release in § 434.71 for remining operations could be debilitating if the language is interpreted to mean that any time passive treatment is incorporated into the pollution abatement plan, the operator will be perpetually liable for the operation and maintenance of the treatment facility. EPA recognizes that passive treatment technologies can be used as part of the overall abatement plan to reduce pollution loads discharging from remining sites and that there are situations where passive treatment may be employed to improve water quality above what was

acceptable through the use of BMPs alone.

Therefore, EPA clarifies that for those remining operations that include passive treatment as an inherent portion of an approved Pollution Abatement Plan, the passive treatment operation shall be treated as part of the Pollution Abatement Plan. Today's regulation requires that the Pollution Abatement Plan is incorporated into the permit as an effluent limitation and applies until the appropriate SMCRA authority has authorized bond release. In this manner, passive treatment technologies also can be incorporated into the Pollution Abatement Plan along with more traditional BMPs in order to further improve water quality. Therefore, coal mining operators are responsible for maintaining passive treatment technologies in accordance with the Pollution Abatement Plan until the appropriate SMCRA authority has authorized bond release.

5. Commingling of Waste Streams

Today's rule makes it clear that the requirements of this subcategory apply only to pre-existing discharges that are not commingled with waste streams from active mining areas and that are not intercepted by active mining. It is not the intention of this rule or of the Rahall Amendment to provide alternative standards for active discharges that are generated by mining and remining operations.

Any pre-existing discharge that is commingled with active mining wastewater for treatment or discharge is subject to the most stringent limitations applicable to any component of the waste stream. This maintains the current regulatory approach at § 434.61 for "commingling of waste streams," which states that where waste streams that are subject to two different effluent limits are commingled for treatment or discharge, the combined discharge is subject to the more stringent limitation.

EPA also recognizes that during remining, it may be necessary or even preferable for an operator to intercept and/or commingle a pre-existing discharge with active mining wastewater. Unless the active wastewater has been previously treated and discharged, this combined wastewater would be required to meet the more stringent applicable limitations for active coal mining operations and would not be covered by the conditions of the Coal Remining Subcategory. However, in cases where a pre-existing discharge is not eliminated by the remining activity and remains after remining has been completed, the pre-existing discharge would no longer be commingled with active mining wastewater. A discharge that is no longer commingled with active wastewater becomes subject to the Coal Remining Subcategory requirements which bar an increase in pollutant loadings from baseline conditions.

In today's rule, a pre-existing discharge that has been intercepted by, or commingled with, an active discharge is not required to continue to meet the more stringent effluent limitations once commingling has ceased. If EPA were to require that these commingled discharges remain subject to effluent limitations designed for active mining operations once interception or commingling has ceased, EPA believes it would create a significant disincentive for remining activities. Based on anecdotal and historical evidence of current mining activities, mining companies may try to avoid intercepting pre-existing discharges because they do not want to assume the liability for future treatment of discharges that were not the result of their mining operations. This can result in a "donut hole" in the permitted area, to which BMPs are not applied and from which pre-existing degraded mine drainage continues to be discharged. In many cases, EPA believes that the most environmentally beneficial approach would be for the coal operation to physically intercept this pre-existing discharge, treat the discharge to the more stringent standards during active mining and reclamation, implement BMPs, and then allow the pre-existing discharge to continue discharging at or below baseline pollutant levels. This approach is consistent with the approach Pennsylvania has been using to implement the Rahall provisions. Another option for a remining operator would be to divert the discharge stream away from the active mining area. In this case, the pre-existing discharge that has been diverted would be subject to the Coal Remining Subcategory effluent limitations, and the mine operator would have to implement appropriate BMPs and demonstrate that the pollutant loadings of the diverted pre-existing discharge stream have not been increased.

6. Relocation of Pre-Existing Discharges

EPA recognizes that the implementation of certain BMPs, particularly hydrologic and sediment control BMPs (*e.g.*, daylighting, regrading, revegetation, spoil pile reclamation, and diversion ditches) within the pollution abatement area is often intended to redirect runoff and infiltration water. In these cases, BMP implementation may result in relocation or dispersion of the pre-existing discharges and of the infiltration water that contributes to these pre-existing discharges. It is the intention of the pollution abatement plan to improve both the pollution loading from pre-existing discharges and the overall environmental conditions. For this reason, today's regulations are also applicable to those pre-existing discharges that have been relocated as a result of the implementation of the best management practices contained in the Pollution Abatement Plan, and that are not commingled with discharges from active mining operations.

7. BMP-Only Permits

As explained in the preamble to the proposed rule (65 FR 19451), EPA interprets the definition of "effluent limitation" in section 502 of the CWA to include non-numeric effluent limitations where it is not feasible to establish numeric effluent limitations. This longstanding interpretation is implemented in 40 CFR 122.44(k), which provides that permits may include BMPs to supplement, or in lieu of, numeric effluent limitations when "numeric effluent limitations are infeasible."

In Section VI.A of the preamble to the proposal (65 FR 19449), EPA discussed the issue of BMP-only permits for the Coal Remining Subcategory. After considering comment on this approach, EPA included a limited provision in the final rule for "BMP-only" effluent limitations where numeric limitations are infeasible. EPA believes that in specific and limited cases, permit requirements may be based on implementation of an approved BMP plan in lieu of numeric limitations based on baseline pollutant levels. EPA has determined that in certain specific cases, it is infeasible to calculate and monitor baseline pollutant levels in pre-existing discharges. These limited circumstances include: a pre-existing discharge that exists as diffuse groundwater flow or as base flow to a receiving stream and is therefore inaccessible; a pre-existing discharge that is inaccessible due to steep or hazardous slopes; a pre-existing discharge that is too large to adequately assess via sample collection; or, a number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

In today's final rule, EPA has included a provision for "BMP-only" permits for those cases in which determination and monitoring of baseline pollutant loading is infeasible and for which remining will result in

significant improvement that would not otherwise occur.

EPA considered requiring that the mine operator monitor the receiving stream to assess the impact the remining operation is having on the receiving stream when there are no numeric limitations on the pre-existing discharge. Pennsylvania's approved Coal Remining and Reclamation Project XL agreement that uses the BMP-based remining permit approach requires the operator to monitor the receiving stream. While EPA strongly supports and encourages monitoring the receiving stream as part of a BMP-based permit, EPA acknowledges that receiving stream monitoring may not be appropriate in all cases (such as a small AML discharge into a very large river), and EPA has not included a requirement for in-stream monitoring. EPA recommends that the regulatory authority review the site-specific factors of the discharge site and include in-stream monitoring wherever appropriate and useful.

8. Water Quality Variances

Section 303(d) of the Clean Water Act provides that States are to list waters for which point source technology-based limits do not ensure attainment of water quality standards, identify the pollutants causing a violation of the standards, and establish total maximum daily loads (TMDLs) that will meet water quality standards for each listed water. Generally, a TMDL identifies what must be done to meet water quality standards in a particular water or watershed. In recent years, EPA and the States have increased their emphasis on TMDL activities. When water quality impairments are identified and TMDLs are established, pollution allocations are determined and implemented. TMDL analyses have identified drainage emanating from abandoned mine land as the source of pollutants inhibiting attainment of water quality standards for thousands of stream miles.

EPA received comments requesting EPA to categorically allow water quality variances for pre-existing discharges at coal remining operations. Water quality variances under the Clean Water Act are a form of State water quality standards developed on a case-by-case basis. Effluent limitations guidelines are national technology-based regulations that establish restrictions on the discharge of pollutants to surface waters or to publicly owned treatment works by specific categories of industries. The requirements are developed by EPA based on the application of process or treatment technologies to control pollutant discharges. The effluent limitations guidelines promulgated under part 434 establish minimum national technology-based effluent standards for the coal mining industry. Therefore, EPA has not included potential variances on water quality standards in this guideline. Of course, a State may submit a proposed variance to EPA under the applicable provisions of 40 CFR part 131.

9. BAT for the Coal Remining Subcategory

Today, EPA promulgates BAT effluent limitations for the Coal Remining Subcategory to control identified toxic and non-conventional pollutants. EPA is defining BAT for the Coal Remining Subcategory through a combination of numeric and non-numeric limitations. Specifically, EPA is establishing that the best available technology economically achievable for remining operations is implementation of a pollution abatement plan that incorporates BMPs designed to improve pH (as acidity) and reduce pollutant loadings of iron, manganese and sediment, and a requirement that such pollutant levels do not increase over baseline conditions. This is essentially the level of treatment that is currently required under permits issued in accordance with the Rahall Amendment (with the exception of sediment), and that has been demonstrated to be currently available by remining facilities included in EPA's Coal Remining database (Record section 3.5.1), the *Coal Remining BMP Guidance Manual* and in Pennsylvania's study of 112 closed remining sites (Record section 3.5.3). These data support EPA's conclusion that site-specific pollution abatement plans have potential for significant removals of pollutant loadings compared to pre-existing discharge conditions. Based on these data, EPA determined that design and implementation of a pollution abatement plan should, in most cases, achieve reductions below baseline discharge levels.

In order to evaluate available technologies to determine BAT, EPA relied on data from 41 remining operations in Pennsylvania. These data are contained in section 3.2.4 of the regulatory record. All of these facilities used abatement plans implementing various combinations of BMPs as their pollutant control technology. Section 301(p) allows permit writers to use best professional judgment (BPJ) to set site-specific BAT limits determined for pre-existing discharges. Pennsylvania completed this BAT determination for 40 of the 41 remining operations. These 40 remining permit modules indicated that the only more stringent technology available (other than BMPs) included treatment (chemical addition, precipitation, and settling). In all 40 cases, remining was considered not economically feasible if treatment of pre-existing discharges to part 434 subpart C effluent limits was required. In the same 40 cases, remining was economically feasible if the abatement plan was implemented. Thus, the Pennsylvania remining permits issued under Rahall were issued as BAT permits. Congress recognized that remining was not being conducted on abandoned mine lands because of the cost and liability of requiring treatment to meet existing regulations and authorized less stringent requirements for remining operations. Therefore, EPA has determined that the implementation of a pollution abatement plan represents the BAT level of control.

The problem with setting numeric effluent limitations representing the reductions achieved through implementation of a pollution abatement plan is that it is difficult to project the results, in terms of measured improvements in pre-existing pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA believes that the *Coal Remining BMP Guidance Manual* compiles the best information available on appropriate implementation and projected performance of all currently identified BMPs applicable to coal remining operations. However, the *Coal Remining BMP Guidance Manual* provides only reasonable estimates of projected performance and efficiency. There are numerous variables associated with the design, implementation, and effectiveness of a particular BMP or group of BMPs at a particular site. Additionally, application of these estimates is subject to substantial, site-specific uncertainties. In some cases, despite appropriate design and implementation of a BMP plan, there is the potential for little improvement over baseline discharges. For these reasons, it is not feasible to project the expected numeric improvements that will occur for a specific pre-existing discharge through application of a particular BMP plan. As a consequence, EPA is establishing a case-by-case non-numeric requirement to implement a pollution abatement plan incorporating BMPs designed to reduce the pollutant levels of acidity, iron, manganese, and solids (TSS or SS) in pre-existing discharges.

Although it is not feasible to establish numeric limits based on predicting pollutant removal efficiencies, it is possible to calculate baseline pollutant

levels in pre-existing discharges at most remining sites. Moreover, the record indicates that application of appropriately designed BMPs should be able to prevent any increase in these pollutant loadings. Today, EPA promulgates numeric effluent limitations that require that the pollutant levels for net acidity, iron, manganese, and solids do not exceed baseline levels. EPA is promulgating a uniform methodology to use for determining and monitoring these levels. Baseline level determination and monitoring procedures are presented in Appendix B of the regulation and in the *Coal Remining Statistical Support Document*.

EPA expects that these limitations and standards will apply primarily to new remining operations. In cases of existing remining operations with Rahall-type permits and established BPJ limitations, EPA believes that it may not be feasible for a remining operator to re-establish baseline pollutant levels during active remining because the BMPs implemented may have already affected the pre-existing discharge. In this case, it would be impossible to require additional baseline sampling after the baseline time window has passed. In situations where coal remining operations seek reissuance of an existing remining permit, the regulatory authority may determine that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures contained in today's rulemaking. Therefore, pre-existing discharges at existing remining operations would remain subject to baseline pollutant levels established during the original permit application.

In its determination of BAT, EPA also performs a cost analysis on the level of treatment required by the regulation. The cost methodology for this assessment was described in Section X.B of the proposal, and EPA has made no changes to the cost methodology for this final action. EPA projects that the annual compliance cost for this new subcategory will be approximately $330,000 to $759,000.

10. BPT for the Coal Remining Subcategory

As discussed above, EPA concluded that the requirement to design and implement a pollution abatement plan represents BAT and that there are no more stringent technologies that are economically achievable. Furthermore, EPA is aware that permits containing these BMPs are currently in place and are being implemented by a large number of operators. Thus, EPA determined that pollution abatement plans also represent the average of the best technology currently available. The pollution abatement plan is required to be designed to control conventional, toxic and non-conventional pollutants, and the plan must reflect levels of control consistent with BPT for conventional pollutants. The *Coal Remining BMP Guidance Manual* should be consulted to determine the adequacy of the plan. As discussed above, EPA concluded that it is infeasible to express BAT as a single numeric limit. Therefore, EPA has established a combination of site-specific numeric and non-numeric effluent limitation guidelines for BPT identical to the BAT limitations for net acidity, iron, manganese, and TSS.

11. BCT for the Coal Remining Subcategory

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (*i.e.*, the cost increase must be less than 29 percent).

In today's notice, EPA is establishing BCT effluent limitations guidelines for TSS equivalent to the BPT guidelines for the Coal Remining Subcategory. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than established for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than established for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA is establishing BCT effluent limitations equal to the established BPT effluent limitations guidelines.

12. NSPS for the Coal Remining Subcategory

In the proposal, EPA did not consider any regulatory options for new sources for the Coal Remining Subcategory because pre-existing discharges at abandoned mine lands covered by the proposed regulation would be by definition in existence prior to permit application. Therefore, at proposal EPA defined all pre-existing discharges as existing sources. However, as described earlier, EPA requested comment in the NODA on applying the effluent limitations for the Remining Subcategory to coal mining operations conducted and abandoned after August 3, 1977. Based on comments received on the NODA, EPA has modified the definition of "remining" to include coal mining operations on sites where coal mining is conducted and abandoned after August 3, 1977. Therefore, despite SMCRA requirements and disincentives to bond forfeiture, it is possible that in the future there will be as-yet unmined sites that will be mined and abandoned for which remining permits will be sought. Pre-existing discharges from remining areas where active mining commenced after the effective date of today's rule and which are subsequently abandoned will be subject to new source performance standards. EPA is establishing NSPS equivalent to BPT, BCT, and BAT because EPA has not identified any economically achievable technology more stringent that BAT.

B. Western Alkaline Coal Mining Subcategory

1. Background

The effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory apply to alkaline mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. This new subcategory is being created primarily because of negative impacts caused by the predominant use of sedimentation ponds necessary to meet the guidelines for Subpart D—Alkaline Mine Drainage. Additional information on the rationale for the new subcategory are explained in Section VI.B of the proposal.

Today's final regulation requires that a western coal mine operator develop and implement a site-specific sediment control plan for applicable areas. The sediment control plan must identify sediment control BMPs and present their design, construction, maintenance specifications, and their expected effectiveness. The final regulations require the operator to demonstrate, using watershed models accepted by the

permitting authority, that implementation of the selected BMPs will not increase sediment loads over pre-mined, undisturbed condition sediment levels. The permit must then incorporate the site-specific sediment control plan and require the operator to implement the plan.

Sediment control BMPs for the coal mining industry are well known and established and include regrading, revegetation, mulching, check dams, vegetated channels, straw bales, dikes, silt fences, small sumps and berms, contour terracing, sedimentation ponds, and other construction practices (*e.g.*, grass filters, serpentines, leaking berms, etc). In order to maintain pre-mined, undisturbed conditions on reclamation and associated areas, EPA is promulgating non-numeric effluent limits based on the design, implementation, and maintenance of these BMPs.

As noted in the proposal, EPA has determined that the predominant use of sedimentation ponds in order to meet the Subpart E numeric standards for settleable solids have caused negative impacts in arid and semiarid environments. This is predominantly due to the large land areas and volume of runoff that must be controlled through ponds in order to meet a sediment limit that is not appropriate for runoff in the arid and semiarid regions of the western United States. EPA notes that sedimentation ponds are considered an effective BMP for controlling sediment, and that sedimentation ponds may be used in conjunction with other BMPs in order to control sediment loads. EPA also recognizes that sedimentation ponds do not necessarily cause negative environmental impacts in all cases. EPA believes that ponds may be necessary in certain circumstances to ensure that sediment levels are not increased over pre-mined levels, or may be necessary to meet SMCRA requirements or to protect water quality. In certain cases, it may also be necessary for the regulatory authority to establish numeric limits to protect water quality. EPA notes that ponds are one in a suite of BMPs that a mine operator may install in order to meet reclamation standards. However, ponds may not be necessary in all circumstances and the use of other BMPs such as check dams, vegetation, silt fences, and other construction practices can be equally protective of the environment. Advantages of using other BMPs in lieu of, or in addition to, ponds is that less land is disturbed than for pond construction and removal and more water is available to maintain the hydrologic balance. EPA believes that the regulation promulgated today allows permitting authorities and mining operators sufficient flexibility to use the appropriate BMPs necessary to control sediment and protect water quality in these regions. EPA has provided information on the range and implementation of available BMPs in the *Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.*

Under today's regulation, EPA is establishing a requirement to develop and implement site-specific sediment control plans that apply in lieu of numeric limits. EPA is requiring that a mine operator develop a site-specific sediment control plan for these areas.

EPA is establishing requirements for site-specific sediment control plans based on computer modeling in lieu of nationally applicable numeric effluent limitations. As discussed above in section V.A.7, such requirements are authorized at 40 CFR 122.4(k) as non-numeric effluent limitations where it is infeasible to establish numeric effluent limitations.

EPA believes that determining compliance for settleable solids based on a single numeric standard for runoff from BMPs is infeasible at western coal mines due to the environmental conditions present. Precipitation events are often localized, high-intensity, short-duration thunderstorms and watersheds often cover vast and isolated areas. Rain may fall in one area of a watershed while other areas remain dry, making it extremely difficult to evaluate overall performance of the BMPs. These factors combine to take it burdensome for a permitting authority or mining operator to extract periodic, meaningful samples on a timely basis to determine if a facility is meeting effluent limitations for settleable solids. The difficulty of sample collection is described in the Phase I Report: Technical Information Package provided by the Western Coal Mining Work Group (Record Section 3.3.1).

Because it is infeasible in such areas to determine compliance and performance of the BMPs in numeric terms, EPA believes that establishment of non-numeric effluent limitations for sediment for this subcategory is authorized under, and is necessary to carry out the purposes and intent, of the CWA.

2. Inspection and Maintenance of BMPs

EPA believes a key factor in using BMPs is the opportunity for continual inspection and maintenance by permitting authorities and coal mine personnel to ensure that sediment control measures will continue to function as designed. EPA concludes that requirements based on site-specific control plans will ease the implementation burden of the rule and allow a permit authority to determine compliance on a regular basis. A permit authority will be able to visit the site and determine if BMPs have been implemented according to the site's sediment control plan. The permit authority would not have to wait for a significant precipitation event to determine compliance.

EPA believes that regular operation and maintenance inspections of BMPs are necessary to ensure compliance with the sediment control plan. EPA also recognizes that SMCRA establishes inspection and monitoring requirements for both surface coal mining and reclamation operations. These requirements include partial inspections at least once per month and complete inspections at least once per quarter. The monitoring requirements include maintenance of records and monitoring equipment, monthly reports to the permitting authority, and provision of other information as the permitting authority deems appropriate.

EPA received several comments on appropriate inspection frequencies and monitoring requirements. The State of New Mexico envisions monthly inspections during the first three years a watershed is in reclamation status and quarterly inspections thereafter. New Mexico believes that field notes or forms maintained on file in mine records and available for inspection is appropriate documentation of these inspections. Other States and mine operators have suggested that self inspections be conducted quarterly and after significant precipitation events.

EPA is not specifying a frequency or procedure for BMP inspections because EPA believes that these decisions should be left to discretion of the permitting authority and be made on a site-specific basis, in accordance with SMCRA and CWA requirements (40 CFR 122.41(i), 122.43, 122.48).

3. Affected Areas

In the proposal, EPA described that the Agency also was considering the use of alternative sediment controls for non-process areas in addition to reclamation areas. Such non-process areas include areas that are not directly in contact with the excavation and processing of coal materials. EPA received numerous comments on the issue in support of expanding the applicability of the final regulation to include these additional non-process areas. EPA also received additional data from the National

Mining Association, in a report entitled "Western Alkaline Coal Mining Subcategory Modeling of Pre-mining Activities Supporting Reclamation and Performance Cost-Benefit Analysis."

As described in the proposal, EPA determined that alternative sediment controls were appropriate for reclamation areas for several reasons. These reasons included: sediment is a natural component of runoff in arid watersheds; sediment is typically the only parameter of concern in runoff from western alkaline reclamation areas; BMPs are proven to be effective at controlling sediment; and computer modeling procedures are able to accurately predict sediment runoff conditions. Due to comments received in support of expanding the application of alternative sediment controls, EPA evaluated non-process areas in addition to reclamation areas under the same set of circumstances. Based on this rationale, in addition to comments and data received on the proposal, EPA determined that similar circumstances exist for runoff from some, but not all, non-process mine areas. Namely, that sediment is typically the only parameter of concern; BMPs can be implemented to maintain sediment levels below baseline; and modeling procedures are accurate for these areas. Therefore, EPA has expanded the Western Alkaline Subcategory to include "brushing and grubbing areas," "topsoil stockpiling areas," and "regraded areas."

- "Brushing and grubbing area" is defined to mean "the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged." BMPs modeled and/or utilized for sediment control of this area include infiltration berms, silt fences, porous rock check dams, and woody plant chipping/rotoclearing surface treatments.
- "Topsoil stockpiling area" is defined to mean "the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms." BMPs modeled and/or utilized for sediment control of this area include establishing vegetation, infiltration berms, and silt fences.
- "Regraded areas" are defined to mean "the surface area of a coal mine that has been returned to required contour." BMPs modeled and/or utilized for sediment control of this area include contour furrowing, establishing timely vegetation, silt fences, porous rock check dams, and woody plant chipping/rotoclearing surface treatments.

EPA concluded that these areas may be sufficiently consistent in slope, vegetative cover, and soil stability such that BMPs can be modeled and implemented to maintain sediment levels below pre-mined, undisturbed conditions. Due to lack of exposure to potential acid forming or toxic materials, EPA does not believe that runoff from these areas will cause degredation of water quality. Therefore, EPA believes that alternative sediment controls can be effectively used on disturbed areas where sediment is typically the only pollutant of concern in order to avoid additional land disturbance.

However, EPA does not believe that alternative sediment controls should be applicable to spoil piles. Spoil piles are areas where overburden is placed prior to regrading and revegetating. Overburden is the material that lies on top of the coal that is removed to gain access to the coal seam. First, EPA does not believe that computer modeling programs are sufficient to accurately model runoff from a highly erodible, unconsolidated land form with steep slopes, such as spoil piles. Second, in terms of BMPs that would be available to sufficiently control runoff from these areas, EPA notes that many of the traditional BMPs, including regrading, revegetating, mulching, check dams, vegetated channels, straw bales, dikes, silt fences, small sumps and berms, and contour terracing could not be implemented or adequate on unconsolidated steep slopes or highly erodible areas. EPA notes that the most likely form of sediment control for runoff from these areas would be site containment by means of temporary berms, ponds, diversion into pit area, and/or commingling with process waters. In contrast, the non-process areas where the Agency is allowing alternative sediment control structures are amenable to utilization of BMPs due to their level surfaces or more stable environment.

EPA generally considers spoil piles as part of the active mine due to the disturbed nature of the materials and the potential for toxic or acid forming materials to be present. Additionally, EPA believes there exists the potential for exposure to toxic or acid forming materials in runoff from spoil piles. EPA notes that, as part of SMCRA requirements, the mine operator must conduct an analysis of the potential toxic or acid forming materials present in the overburden and take appropriate action to prevent the discharge of these materials to surface waters. However, the appropriate action (such as covering material) may be concurrent with deposition of overburden, and EPA does not believe that the Agency has been presented with sufficient evidence that toxic or acid forming materials are guaranteed not to be present in runoff from spoil piles.

EPA believes that the exclusion of spoil pile areas from the Western Alkaline Subcategory will not significantly detract from the benefits of this new subcategory. OSMRE regulations restrict the size of the overburden salvaging area and require timely regrading and revegetation (SMCRA, Pub. L. 95–87 sections 508 and 515). In a report submitted in comments by the National Mining Association, the salvaging area was estimated to be 750 feet wide and 5,083 feet long. Although the spoil pile area has a fairly large footprint, EPA notes that the area generating runoff that EPA considered for inclusion of the Western Alkaline Subcategory is limited. EPA notes that the runoff from the spoil piles adjacent to the active mine pit will drain directly into the mine pit and will be treated as active mine water, regardless of EPA's decision. The only area that would be affected by EPA's decision is the area containing runoff from the outslope of the last spoil pile, and this area is relatively limited. Based on the decision not to include spoil piles in the Western Alkaline Coal Mining Subcategory, EPA envisions that the runoff from spoil pile areas will be rerouted back into the mine pit through temporary berms and dikes and will not likely involve construction of additional sedimentation ponds. Such spoil piles continue to be covered by existing regulations at subpart D—Alkaline Mine Drainage.

4. SMCRA Requirements

The SMCRA permit application process requires a coal mining operator to submit an extensive operation and reclamation plan, documentation, and analysis to OSMRE or the primacy permitting authority for approval. The requirements for the operation and reclamation plan are specified in 30 CFR part 780 for surface mining permit applications and part 784 for underground mining permit applications. In brief summary, some of the OSMRE requirements that directly relate to this CWA regulation include requirements for coal mining operators to provide: a description of coal mining operations; a plan for reclaiming mined lands; a plan for revegetating mined lands; geologic information; hydrologic information including: a description of baseline ground water and surface water characteristics under seasonal conditions; and an analysis of the

hydrologic and geologic impacts caused by the reclamation activity. Specifically, the plan requires a "probable hydrologic consequences (PHC)" determination to determine the impacts of the mining on existing hydrologic conditions and a hydrologic reclamation plan to show measures for reducing impacts and to meet water quality laws and regulations. Furthermore, the coal mining regulatory authority is required to conduct a cumulative hydrologic impact analysis of the proposed operation and all anticipated mining on surface water and ground water systems.

Additionally, SMCRA requires a chemical analysis of potentially acid or toxic forming sections of the overburden and chemical analysis of the stratum lying immediately underneath the coal (Section 507 (b)(15)). The mine operator must provide for avoiding acid or other toxic mine drainage by such measures as, but not limited to: preventing or removing water from contact with toxic producing deposits; treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and keeping acid or other toxic drainage from entering ground and surface waters (Section 515 (b) (10)). This analysis is required for the determination that the mine produces alkaline mine drainage and will be covered by the Alkaline Mine Drainage Subcategory. Based on the applicability of this regulation which restricts the Western Alkaline Coal Mining Subcategory to areas producing alkaline drainage in arid and semi arid areas, EPA does not believe that toxic or acid forming materials will be present in the runoff from non-process areas of alkaline coal mines. However, EPA acknowledges that SMCRA requirements are an additional measure of protection to ensure that any acid forming or toxic forming pockets will be identified and addressed as necessary to prevent the release of these materials in stormwater runoff.

EPA concluded that sediment control plans developed to comply with SMCRA requirements will usually fulfill the requirements in today's regulation. In general, the sediment control plan will largely consist of materials generated as part of the SMCRA permit application. The requirement to use modeling techniques also is not inconsistent with SMCRA permit application requirements, as mining facilities already submit a watershed model as part of their SMCRA reclamation plan.

EPA proposed and is finalizing the following language regarding acceptable computer models: "The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit." EPA intends this to mean that a mine can use the upgraded version of a computer model that was used in the original application. For example, if the mine used SEDCAD 4.0 in their SMCRA permit application, then the mine operator can use SEDCAD 5.0 in subsequent modeling procedures for its CWA permit application. EPA believes that this language provides the necessary flexibility to use the most recent and appropriate modeling procedure. A guidance manual entitled "Guidelines for the Use of the Revised Universal Soil Loss Equation (RUSLE) Version 1.06 on Mined Lands, Construction Sites, and Reclaimed Lands" published by OSMRE in August, 1998 describes the use of RUSLE for sediment modeling and should be consulted for modeling approaches.

5. Bond Release

The new subpart for Western Alkaline Coal Mining includes the following language: "The effluent limitations in this subpart apply until the appropriate SMCRA authority has authorized bond release." This language is consistent with the language in other subparts to part 434. As defined in § 434.11(d) General definitions: "The term 'bond release' means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed." EPA notes that this language does not necessarily mean "final" bond release (which may be applicable to an entire mining operation) and that reclamation work may be satisfactorily completed on a watershed or a specific part of a disturbed area before the entire mine site has been reclaimed (or even mined), i.e., "partial bond release." Therefore, EPA intends this current definition to allow a facility to terminate NPDES discharge points when "partial" bond release is obtained.

6. Definition of Alkaline Mine Drainage

EPA received comment that the proposed definition for alkaline mine drainage imposes limitations for iron concentrations without regard to the form of the iron. The commenter noted that the primary mineral responsible for high total iron readings in certain western areas is magnetite. Magnetite (Fe_3O_4) is a naturally occurring iron mineral, which is in a form not typically associated with coal mining operations and acid mine drainage. In natural undisturbed conditions, the commenter cited that surface water samples register values for total iron as high as 40,000 mg/L (or 4%), due to the sediment, which is collected as part of the water sample. The commenter argued that the form of iron was not considered in the original mining regulations, and the commenter requested that EPA modify the definition of the Western Coal Mining Subcategory to include areas that have naturally-occurring high concentrations of iron due to magnetite.

Although EPA has not revised either the definition of alkaline mine drainage or western coal mining operations, EPA acknowledges the concern regarding the high levels of total iron that may be found in natural discharges from western alkaline coal regions. EPA recognizes that the geochemistry of the western arid and semiarid coal regions, which is predominated by sandstone and limestone, differs from that of the eastern coal regions. As a result, the production of acid mine drainage is much less typical due to the inherent buffering capacity. In addition, EPA recognizes that there is a low occurrence of pyrite in the west, which is the common culprit of acid mine drainage generation. Instead, iron often occurs in the form of magnetite (Fe_3O_4), an inert iron oxide that has no acid forming potential.

EPA evaluated the processes that produce acid mine drainage and the geologic conditions typical of the western alkaline coal regions to determine the most appropriate parameters for indicating alkaline mine drainage. In summary, EPA concluded that pyrite is generally uncommon in this coal region and that, if it does occur at a significant level, it can be identified by the presence of dissolved iron. For this reason, it is also appropriate to measure dissolved iron, in lieu of total iron, for surface runoff from the areas affected by the Western Alkaline Coal Mining Subcategory. Additionally, acid mine drainage in the western region is often prevented by the presence of carbonate minerals. Therefore, to ensure that acid-forming potential is not inherent to a particular discharge, EPA believes that an assessment of net alkalinity should be made. Determination of net alkalinity takes into account the effects of non-ferrous metals (e.g., Al, Mn), carbonates, and other substances, and, as such, negative values of net alkalinity are a true indication of potential acidity of drainage waters.

For these reasons, EPA has revised the applicability of the Western Alkaline Coal Mining Subcategory as follows: "This subpart applies to drainage at western coal mining operations from

reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements: (1) pH is equal to or greater than 6; (2) dissolved iron concentration is less than 10 mg/L; and (3) net alkalinity is greater than zero." EPA believes that this will enable certain mines to use alternative sediment controls while maintaining the intent of the regulation that this subcategory does not apply to mines that produce acid mine drainage.

7. BPT for the Western Alkaline Coal Mining Subcategory

EPA is today promulgating BPT effluent limitations for the Western Alkaline Coal Mining Subcategory to control sediment in discharges from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. For further information on the basis for the limitations and technologies selected see the *Development Document for Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.*

EPA determined that BPT for the Western Coal Mining Subcategory consists of designing and implementing BMPs to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. EPA has developed this new subcategory primarily to addresss the negative environmental impacts created by the previous requirements.

Requirements for reclamation areas (40 CFR part 434, subpart E) establish BPT, BAT, and NSPS based on the use of sedimentation pond technology, and set effluent limitations for settleable solids and pH. The Subpart E guidelines apply to all reclamation areas throughout the United States, regardless of climate, topography, or type of mine drainage (i.e., acid or alkaline).

Subpart E establishes controls on the amount of settleable solids that can be discharged into waterways from reclamation areas. Although sedimentation ponds are proven to be effective at reducing sediment discharge, EPA believes that there are numerous non-water quality impacts that may harm the environment when construction of large sedimentation ponds in arid and semi arid regions are necessary to meet current effluent limits. The negative non-water quality impacts associated with existing regulations include: disturbing the natural hydrologic balance of arid and semiarid western drainage areas; accelerating erosion; reducing groundwater recharge; reducing water availability; and impacting large areas of land for sedimentation pond construction. A further discussion of these impacts can be found in Section VIII of this document and in the *Development Document for the Western Alkaline Coal Mining Subcategory.*

EPA has concluded that the current numeric requirements at subpart E are not appropriate for arid and semiarid western reclamation areas because of the negative non-water quality impacts associated with the predominant use of sedimentation ponds to meet these limits, as discussed above. The appropriate goal for reclamation and discharges from post-mined lands should be to mimic conditions that were present prior to mining activities. In order to do this, it is necessary to maintain the hydrologic balance and sediment loadings of pre-mining, undisturbed conditions on post-mined lands. EPA believes that use of BMPs, including sedimentation ponds where appropriate, to control discharges is the most effective control technology. Therefore, EPA is establishing BPT that consists of designing and implementing BMPs that are projected to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. This would ensure that undisturbed conditions are maintained. In order to achieve these results, EPA requires that the coal mining operator develop a sediment control plan and demonstrate the effectiveness of the sediment controls through computer modeling. These requirements are detailed in the regulatory text.

EPA also evaluated the costs of BPT. As discussed in Section IX of this document, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators (although EPA believes that most will also incur cost savings). Therefore, implementing these standards will result in no facility closures or negative economic impact to the industry. EPA projects that the new subcategory will result in cost savings of $12.8 million to $13.2 million annually.

8. BCT for the Western Alkaline Coal Mining Subcategory

EPA is establishing BPT and BAT to control conventional, toxic, and non-conventional pollutants based on a sediment control plan. EPA is not establishing numeric effluent limitations for any conventional pollutant and EPA is not promulgating BCT limitations for this subcategory at this time.

9. BAT for the Western Alkaline Coal Mining Subcategory

EPA has not identified any more stringent treatment technology that could represent BAT level of control for maintaining discharge levels of solids consistent with pre-mined conditions on post-mined land in the western alkaline coal region. EPA is therefore establishing that BAT standards be equivalent to BPT. Further, as discussed in Section IX of this document, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators. Therefore, implementing BAT standards will result in no facility closures or negative economic impact to the industry.

10. NSPS for the Western Alkaline Coal Mining Subcategory

As discussed for BAT, EPA has not identified any more stringent treatment technology option that it considers to represent NSPS level of control. Further, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral to affected underground operators. Therefore, implementing NSPS standards will result in no barrier to entry based upon the establishment of this level of control for new sources. EPA has therefore determined that NSPS standards be established equivalent to BAT.

VI. Statistical and Monitoring Procedures for the Coal Remining Subcategory

A. Statistical Procedures for the Coal Remining Subcategory

EPA's statistical procedures are presented in Appendix B of the regulation and described in detail in the *Coal Remining Statistical Support Document.* The procedures in Appendix B apply to the Coal Remining Subcategory.

The regulatory text requires that calculations described in Appendix B be applied to pollutant loadings. Pollutant loadings are calculated as the product of a flow measurement and a pollutant concentration. As described in the proposal, EPA has interpreted the Rahall amendment's requirement not to exceed a pollutant baseline "level" as a requirement not to exceed a pollutant baseline loading. EPA's record demonstrates that BMPs applied during remining act principally by reducing discharge flow and pollutant loading. In fact, pollutant concentration may actually increase in some cases where the pollutant quantity (loading) is

reduced substantially. Setting limits based on concentrations would very likely inhibit beneficial remining projects and would be counter-productive and ineffective. To achieve pollutant reductions from remining, EPA concluded that it is essential to set limits for pollutant loadings rather than concentrations.

The objective of these statistical procedures is to provide a method for deciding when the pollutant levels of a discharge exceed baseline pollutant levels. These procedures are intended to detect a substantial, continuing state of exceedance, while reducing the likelihood of a "false alarm." To do this, it is essential to a have an adequate duration and frequency of sample collection to determine baseline levels and to determine compliance with these levels.

In developing these procedures, EPA considered the statistical distribution and characteristics of discharge loadings data from pre-existing discharges, the suitability of parametric and non-parametric statistical procedures for such data, the number of samples required for these procedures to perform adequately and reliably, and the balance between false positive and false negative decision error rates. EPA also considered the cost involved with sample collection as well as delays in permit approval during the establishment of baseline, and considered the potential that increased sampling could discourage remining. In order to sufficiently characterize pollutant levels during baseline determination and during each annual monitoring period, EPA is requiring that the results of at least one sample be obtained per month for a period of 12 months.

EPA evaluated the statistical properties of eastern coal mine discharge data (EPA's Coal Remining Database, DCN 1335 and the *Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load,* EPA (821–B–01–014). EPA verified its findings as discussed in the proposal on relative variability of pollutant loadings. EPA also characterized the serial correlation of loadings and flow. EPA found that (a) to a first approximation, loadings might reasonably be described by a first-order autoregressive model, and (b) the coefficient of serial correlation for loadings at a one-month time lag typically ranged from 0.35 to 0.65, with the median near 0.50.

EPA evaluated the proposed statistical procedures and a variety of parametric and non-parametric alternative procedures to determine their decision error rates, their suitability for serially correlated data, and their ability to accommodate zero loadings and negative loadings. As a result of these evaluations, EPA modified the proposed statistical procedures so as to achieve the objective stated in the preamble to the proposed rule: to have a power of at least 0.75 for detecting an increase of one standard deviation in the average for loadings, while minimizing the chance of 'false alarms' in the event that the average loading decreases or remains unchanged.

Zero loadings are expected to occur, at least for some remining sites, after regrading and contouring when discharge flows may be reduced greatly; zero flows have been observed after remining at some mine sites (EPA's Coal Remining Database, DCN 1335 and the *Coal Remining BMP Guidance Manual*). Negative values of loadings are possible and have been observed for net acidity at some mine sites.

Serial correlation has a profound influence over the power of statistical procedures. The statistical procedures, as proposed, were more suitable for uncorrelated data than for serially correlated data. EPA modified the procedures so that they have the intended power when applied to serially correlated loadings data of the sort typical of remining sites in the eastern U.S. (Record section 11.1). The modifications consisted of (a) increasing the number of times in succession that the baseline trigger value must be exceeded for additional sampling or treatment to be required, (b) changing numeric constants used in the calculation of baseline trigger values, and (c) under proposed Procedure B, dropping the parametric statistical methods and providing a nonparametric calculation for the single-observation trigger.

In the preamble to the proposed rule, EPA discussed the potential problem of unrepresentative baseline years and optional measures that could mitigate the uncertainty of characterizing the baseline loadings. It is possible that one year of sampling may not accurately characterize baseline levels, because discharge flows can vary among years in response to inter-year variations in rainfall and ground water flow. There is some risk that the particular year chosen to characterize baseline flows and loadings will be a year of atypically high or low flow or loadings. There may be a need to evaluate differences among baseline years in loadings and flows. Therefore, EPA investigated optional procedures that could be used to account for the uncertainty in characterizing baseline from a one-year sample duration, or that could be used to account for the unrepresentative character of a baseline sampling year. EPA evaluated correlations between discharge flow and various parameters of existing mine discharge data and indices for which data spanning over many years are available to the public (i.e., Palmer Indices, Standardized Precipitation Index, Crop Moisture Index, Surface Water Supply Index, and USGS Current and Historical Daily Streamflow). EPA concluded that historical stream flow data from a USGS gage station associated with a discharge could be used to test whether the given baseline year was significantly different from the previous years. This would be done by comparing the mean stream flow for the baseline year to the 2.5th and 97.5th percentiles of annual mean stream flows prior to the baseline year. If the mean stream flow for the baseline year falls below the 2.5th percentile or above the 97.5th percentile, corrective action can be taken on the baseline data, and EPA recommends that the operator or permitting authority conduct additional monitoring to establish a meaningful baseline. However, due to the site-specific nature of discharges and the variability of streamflow compared to discharge data, EPA was unable to establish any optional procedure that could incorporate existing data from public sources into a meaningful baseline calculation.

Stakeholders have commented that, occasionally, a pre-existing discharge may contain iron or manganese concentrations that are lower than the current subpart E effluent limitations established for active mine wastewater. In these circumstances, the baseline standards may be a disincentive for remining because the operator may have to treat a discharge to levels below those currently required by BAT for active mine discharges. This may be a disincentive for remining operations. Therefore, EPA has incorporated a methodology in the statistical procedure for determining baseline so that the BAT concentration limit is substituted for certain baseline measurements when a measured concentration is below the BAT limit.

B. Evaluation of Statistical Triggers

EPA evaluated the power of the statistical triggers in Section VIII of the proposed rule. Power can be defined in plain language as the frequency with which a statistical decision procedure will declare that remining loadings exceed baseline loadings when the remining loadings truly are greater than baseline loadings.

The ideal statistical procedure would always declare "not larger" when

remining pollutant loadings are less than or equal to baseline loadings, and would always signal "larger" when remining loadings exceeded baseline. No such ideal procedure exists. Instead, the rate of signaling "larger" will increase as the average difference between baseline and remining loadings increases in magnitude. Statistical triggers may be "tuned" by choosing their numeric constants so that a compromise is achieved between false alarms (that is, signaling "larger" when remining loadings are not larger than baseline loadings) and correct alarms (when remining loadings truly are greater).

Power of the statistical triggers was evaluated by simulating a 60-month monitoring program for 5000 discharges, and recording the frequency with which the triggers indicated that the remining loadings exceeded baseline. The evaluations of power led to a choice of numeric constants that achieve a reasonable balance between false alarms and correct alarms.

This reasonable balance was considered to be achieved when a trigger produced the following results:

(1) When there was no change in loadings from the baseline to remining time period, the power ("false alarm rate"; type-I error rate) was not larger than that for the triggers used by Pennsylvania's successful remining program;

(2) When there was a decrease of 0.5 standard deviations in the mean loading after the baseline period, the power ("false alarm rate," in this case the probability of concluding that loadings increased during remining when they actually decreased) was smaller than 5%;

(3) When the mean loading increased by 1 to 2 standard deviations after the baseline period, the power ("correct alarm rate") was maximized.

EPA reached several conclusions about the proposed statistical triggers based on these evaluations.

(1) The proposed Cumulative Sum Control Chart (CUSUM) method under Procedure B did not add value to the simpler monthly and annual comparisons. Accordingly, the CUSUM method is omitted from Appendix B to the final rule.

(2) The magnitude of serial correlation has a substantial effect on power. Statistical triggers that have reasonable power when there is no serial correlation could be unreasonable when there is substantial serial correlation, because they could then have very high rates of type I errors (false alarms). It was necessary to select numeric constants for the statistical triggers that are appropriate to data having autocorrelation. For evaluating and comparing statistical methods and triggers, EPA relied primarily upon the power in simulations for which the first-order autocorrelation coefficient took the value of 0.5.

(3) The Single Observation Trigger of the proposed Procedure A had a high rate of declaring loadings to be larger than baseline when they were not. The Single Observation Trigger was therefore modified to agree with the method that has long been used successfully in the State of Pennsylvania. The statistical modification was to change the Single Observation Trigger at Step 5 from *"If any two observations exceed L during weekly monitoring, * * *"* to the following: *"If all four weekly observations exceed L during weekly monitoring, * * *"*

(4) Proposed Procedure B, "E. Annual Comparisons," also had a high rate of declaring loadings to be larger than baseline when they were not. This part of proposed Procedure B was modified to require use of Tables for the 99.9% level (alpha = 0.001) rather than the 95% level (alpha = 0.05) for the Wilcoxon-Mann-Whitney Test.

(5) The Single Observation Limit of the proposed Procedure B was changed from a parametric to a nonparametric method which has similar power. The nonparametric method accommodates zero flows (which may occur during remining) and negatively-valued loading data (which may occur for net acidity) without requiring additional or complex modifications (as the proposed parametric method would).

(6) The annual (subtle trigger) and single-observation (quick trigger) triggers long used in Pennsylvania were included in the simulations. EPA believes that the error rates and power of these triggers were acceptable in practice because BMPs reduced discharge loadings substantially. Hawkins (1994) reviewed the application of these triggers to remining operations in Pennsylvania, and concluded that the rates of triggering were low because remining almost always reduced loadings substantially. EPA's *Coal Remining Best Management Practices Guidance Manual* includes an extensive analysis of remining discharges that supports this conclusion. EPA concluded that the statistical triggers that Pennsylvania uses in its remining program are acceptable and effective. Method 1 of the Final Rule follows the Pennsylvania triggers exactly except that a different constant (1.815 = 1.96 * 1.25 / 1.35) is used in the formula for the Annual Procedure in order to decrease the likelihood of obtaining false positives. Pennsylvania uses a more stringent number (1.58 = 1.7 * 1.25 / 1.35). For a complete discussion of EPA's rationale and selection of statistical methodology, see the *Coal Mining Statistical Support Document*.

(7) The evaluation of power applies to a worst-case situation. In particular, the rate of declaring loadings to be larger than baseline when they are not is overstated by the results. It is evaluated in terms of the percentage of mines that would experience at least one finding that loadings exceed the baseline level over a period of five years (60 months), when in fact there has been no change from baseline. In practice, the area contributing to a discharge should be remined and regraded in less time, after which the discharge flow and loading will be substantially reduced. Thus, the time period during which one can expect loadings at the baseline level typically will be shorter than five years. This in turn will mean lower percentages than reported in Table 1 for the condition of no change from baseline loadings.

(8) The procedures as proposed had unreasonably high "false alarm rates" because they were designed for uncorrelated data. The modified procedures provided for the final regulation have reasonable performance when applied to serially-correlated, lognormally-distributed data typical of coal mine discharge loadings.

The power of statistical triggers for the final regulation is shown in Table VI.B.1. The results show that Method 1 and Method 2 have comparable power. The main difference stems from the Monthly Procedure, which has higher power when Method 1 is used. Note that the Annual Procedure used without the Monthly Procedure would not have a high rate of detecting an increase of one standard deviation above baseline. Used in combination, the monthly and annual triggers provide power over 90% to detect substantial increases above baseline at least once during five years, although in practice the power will be smaller for reasons discussed above under (7).

TABLE VI.B.1.—STATISTICAL TRIGGERS AS MODIFIED FOR FINAL REGULATION: PERCENTAGE OF MINES DECLARED TO EXCEED BASELINE LEVEL (AT LEAST ONCE DURING 5 YEARS OF SIMULATED MONTHLY MONITORING) [1]

Annual trigger [3]	Monthly trigger [4]	Shift from baseline to remining period [2]			
		−0.5	0	+1	2
None	Method 1	10	33	89	99
Method 1 (a=1.96)	none	3	11	59	94
Method 1 (a=1.96)	Method 1	12	39	93	100
Method 1 (a=1.96)	Method 2	7	29	91	100
None	Method 2	5	22	86	100
Method 2 (α=0.001)	none	2	11	65	97
Method 2 (α=0.001)	Method 2	7	28	91	100
Method 2 (α=0.001)	Method 1	12	38	93	100

[1] Assumes monthly serial correlation of 0.5 for log(x), with x distributed lognormally. Percentages were rounded to the nearest 1%.
[2] The shift was scaled in terms of standard deviation units (sigma symbol = standard deviation)
[3] Annual procedures: Method 1 of the final regulation is the Subtle Trigger under Procedure A of the proposed regulation, with the leading constant changed from 1.58 to 1.96. Method 2 of the final regulation is the Wilcoxon-Mann-Whitney Test under Procedure B (E. Annual Comparisons) of the proposed regulation, with the significance level changed from 0.05 to 0.001.
[4] Monthly procedures: Method 1 of the final regulation is the Single-Observation Trigger under Procedure A of the proposed regulation. Method 2 of the final regulation is a nonparametric replacement for the parametric Single-Observation Trigger under Procedure A of the proposed regulation.

C. Sample Collection To Establish Baseline Conditions and To Monitor Compliance for the Coal Remining Subcategory

EPA evaluated the duration and frequency of sampling necessary to apply the statistical procedures. Those procedures are used to compare the levels of baseline loadings to the levels of loadings during remining or the period when the discharge is permitted. Without an adequate duration and frequency of sampling, the statistical procedures would often fail to detect genuine exceedance of baseline conditions or could establish baseline levels that are established as either too low or too high.

Based on the considerations described below, EPA proposed that the smallest acceptable number and frequency of samples is 12 monthly samples, taken consecutively over the course of one year. In the proposal, EPA raised the possibility that seasonal stratification might have the potential to provide a basis for more precise estimates of baseline characteristics, if the sampling plan is designed and executed correctly and if results are calculated using appropriate statistical estimators, and that there may be alternative plans that could be based upon subdivision of the year into distinct time periods. These time periods might be sampled with different intensities, or could be based on other types of stratified sampling plans that attempt to account for seasonal variations. EPA received several comments stating that a baseline sampling period of less than 12 months may be appropriate.

EPA considers an adequate number of samples to be that number that would allow an appropriate statistical procedure to detect an increase of one standard deviation in the mean or median loading between a baseline year and a monitoring year with a probability (power) of at least 0.75.

The power analysis used in the proposed statistical procedures was based on a two-sample t-test. The t-test can be an appropriate statistical procedure for a yearly comparison because loadings from mine discharges appear to be approximately distributed log-normally, and thus logarithms of loadings are expected to be approximately distributed normally. The (non-parametric) Wilcoxon-Mann-Whitney test is also appropriate for yearly comparisons and has a power nearly equal to that of the t-test when applied to normally distributed data. EPA determined that annual comparisons of baseline to remining years based upon 12 samples in each year were expected to have a power 0.75 to detect a difference of one standard deviation. While the t-test was dropped as a statistical procedure for assessing baseline in the Final Rule, the analyses defined in Appendix B, including the Wilcoxon-Mann-Whitney test, were designed to have similar power if 12 baseline samples were collected. If significant autocorrelation is present between samples (as discussed in section VI.B), the estimated power is likely to be less than 0.75; therefore, 12 samples should be considered the minimum acceptable for determining baseline.

An increase of one standard deviation can represent a large increase in loading, given the large variability of flows and loadings observed in mine discharges. The coefficient of variation (CV) is the ratio of the standard deviation to the mean of the observations. Sample CVs for iron loadings range approximately from 0.25 to 4.00, and commonly exceed 1.00. Sample CVs for manganese loadings range approximately from 0.24 to 5.00. When the CV equals 1.00, an increase of the average loading by one standard deviation above baseline implies a doubling of the loading.

The duration, frequency, and seasonal distribution of sampling are important aspects of a sampling plan, and can affect the precision and accuracy of statistical estimates as much as can the number of samples. To avoid systematic bias, sampling, during and after baseline determination, should systematically cover all periods of the year during which substantially high or low discharge flows can be expected.

Unequal sampling of months could bias the baseline mean or median toward high or low loadings by oversampling of high-flow or low-flow months. However, unequal sampling of different time periods can be accounted for using statistical estimation procedures appropriate to stratified sampling. Stratified seasonal sampling, possibly with unequal sampling of different time periods, is a suitable alternative to regular monthly sampling, provided that correct statistical estimation procedures for stratified sampling are applied to estimate the mean, median, variance, interquartile range, and other quantities used in the statistical procedures, and provided that at least one sample be taken per month over the course of 1 year.

In conclusion, EPA is promulgating a statistical procedure that requires a minimum of 12 monthly samples, taken

consecutively over the course of one year to determine baseline.

D. Regulated Pollutant Parameters in Pre-Existing Discharges

EPA proposed to regulate iron, manganese, and pH, which are the parameters addressed by the Rahall Amendment and are a subset of the parameters directly regulated in 40 CFR part 434. Additionally, EPA solicited comment in the proposal and NODA on regulating acidity instead of pH, on establishing alternative limits for sediment, and on establishing limitations or monitoring requirements for additional parameters such as sulfate. Based on comments received and on further data evaluation, EPA is establishing limitations for iron, manganese, net acidity, and solids. These issues are addressed below.

1. Acidity

The Rahall Amendment provides an exemption for remining operations from BAT effluent limitations for the pH level in pre-existing discharges. In the proposed rule, EPA solicited comment on the use of acidity instead of pH for pre-existing discharges. In very dilute or pure water, pH can be considered a measurement of acidity. In drainage from abandoned coal mines, however, pH is an indication of the instantaneous hydrogen ion concentration, and does not measure the potential of the solution to produce additional hydrogen from metals or carbon dioxide during neutralization or further oxidation. Because hydrogen ions are only one component of the acidity that can occur in acid mine drainage, there can be instances where, although the pH is nearly neutral, acidity exceeds alkalinity. Therefore, EPA concluded that the reduction of pollutant loadings can best be achieved by evaluating acidity, which includes pH.

In the final rule, pollutant loading is used to define baseline conditions for remining operations because loading captures both pollutant concentration and discharge flow. Although it is possible to determine a pH load (*i.e.*, load of H^+ ions), it is not very meaningful because pH load does not account for the latent acidity that is present in the form of dissolved metals or carbon dioxide. Additionally, in cases where treatment of discharges is required, the amount of treatment is based on acidity or net alkalinity rather than on pH. For this reason, acidity data already are typically submitted with remining permit applications and reporting. Pollutant loading is also used to determine mass balances and the effects of a discharge on a receiving waterbody. Such a determination is possible for acidity, net acidity, or alkalinity, but is not likely to be meaningful for pH because mixing can result in precipitation or dissolution of ions.

EPA notes that commenters were unanimous in their support for the use of acidity instead of pH. For these reasons, EPA has modified the limitations in the final rule to require compliance with baseline net acidity determinations.

2. Sulfate

EPA also solicited comments and data regarding the merits of using sulfate as a parameter for assessment of pollution loading from pre-existing discharges. Commenters agreed that this is a useful parameter for determining whether or not a pre-existing discharge is affected by mine drainage, and how remining BMPs have affected the discharge. However, commenters noted that it should be assessed as part of the baseline and for the potential effects of remining, but should not be included as a baseline effluent limit.

EPA concluded that sulfate is a useful parameter for evaluating the effectiveness of BMPs implemented under a Pollution Abatement Plan, and is aware that current State remining programs request that sulfate data are submitted during permit application and periodic reporting. EPA encourages this practice, but EPA agrees with commenters that effluent limitations for sulfate are unnecessary to determine that pre-existing discharge loadings are not increased over baseline.

3. Solids

EPA did not initially propose alternative limits for solids. However, due to comments received on the proposal, EPA issued a Notice of Data Availability (NODA) presenting commenters' concerns and new data submitted to EPA regarding solids levels in pre-existing discharges. EPA received numerous comments on the NODA which supported EPA's decision to adopt alternative limits for solids.

Based on the existing conditions of sediment present at some AML, EPA concluded that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. Consistent with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, EPA is establishing alternative limits for TSS such that the sediment load of the pre-existing discharge cannot be increased over baseline during remining and reclamation activities.

EPA believes that the final regulation is consistent with SMCRA which mandates the prevention of additional contribution of suspended solids to streamflow to the extent possible using the best technology currently available. EPA has adopted what is essentially a compliance schedule so that, during remining and reclamation activities, the operator cannot contribute sediment levels beyond the baseline discharge loading. After remining and reclamation has been completed, the operator must meet the standards for TSS and SS contained in subpart E—Post Mining areas prior to bond release. EPA concluded that the implementation of successful sediment control BMPs should, in most cases, be able to meet the BPT standards contained in subpart E—Post Mining areas regardless of whether the area has been disturbed due to remining or virgin mining.

Based on comments provided, however, EPA believes that there may be some exceptions where the post-mining sediment standards may not be economically feasible and may be detrimental for remining areas. Therefore, EPA has provided an exclusion from the post-mining sediment standards for "steep-slope" areas and other areas where the permitting authority determines it is infeasible or impractical based on the site-specific conditions of soil, climate, topography, or baseline conditions. In these instances, the pre-existing discharge must still meet the alternative baseline standards.

An example of when it would be impractical to establish subpart E numeric standards would be a tract of AML in the pollution abatement area that is not disturbed by remining. In this case, voluntary vegetative growth may have already been established and sediment runoff may be minimal. In this case, however, the AML area may not support 100% plant coverage and the discharge may contain a moderate amount of sediment that does not meet the subpart E numeric standards. In this case, the NPDES permitting authority may decide that it would be excessively costly and may even be more harmful to disturb the area, reclaim the land, revegetate the area and incorporate BMPs to meet the subpart E standards. EPA believes that this exclusion establishes necessary flexibility to permit authorities to adopt the most environmentally beneficial and cost-effective approach to reclamation.

During remining, the alternative limits for TSS are to be established in a manner consistent with the alternative

limits established for acidity, iron, and manganese (*i.e.*, based on the statistical methodology provided in Appendix B of the final regulation). The statistical procedures are described in Section VI.A above. This protocol requires a minimum of 12 monthly samples to establish baseline. EPA recommends that baseline sediment sampling include precipitation events in order to adequately characterize the baseline where runoff contributes directly to the sediment load.

VII. Non-Water Quality Environmental Impacts of Final Regulations

The elimination or reduction of pollution has the potential to aggravate non water quality environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of this regulation on air pollution, solid waste generation, energy consumption, and safety. Today's rule does not require the implementation of treatment technologies that result in any increase in air emissions, in solid waste generation or in energy consumption over present industry activities.

Non-water quality environmental impacts are a major consideration for this rule because the rule is intended to improve or eliminate a number of existing non-water quality environmental and safety problems. Remining operations have improved or eliminated adverse non-water quality environmental conditions such as abandoned and dangerous highwalls, dangerous spoil piles and embankments, dangerous impoundments, subsidence, mine openings, and clogged streams that pose a threat to health, safety, and the general welfare of people. EPA projects that remining has the potential to eliminate nearly three million feet of dangerous highwall in the Appalachian and mid-Continent coal regions.

EPA also does not expect today's rule to have an adverse impact on health, safety, and the general welfare of people in the arid and semiarid western coal region. The intent of the rule is to allow runoff to flow naturally from disturbed and reclaimed areas. EPA believes that, in most cases, this is preferable to retention in sedimentation ponds that is accompanied by periodic releases of runoff containing sediment imbalances potentially disruptive to land stability. Alternate sediment control technologies in these regions address and alleviate adverse non-water quality environmental conditions such as: quickly eroding stream banks, water loss through evaporation, soil and slope instability, and lack of vegetation.

Based on this evaluation, EPA concluded that the regulations being promulgated today under these new subcategories will improve existing AML conditions in the eastern United States and will improve the hydrologic imbalances produced by application of current regulations in the western arid and semiarid United States.

VIII. Environmental Benefits Analysis

EPA presented estimates of the environmental benefits of today's regulation in Section IX of the proposal. The benefits assessment for the Coal Remining Subcategory is identical to the assessment performed at proposal. For the Western Alkaline Coal Mining Subcategory, the methodology for the assessment is identical to that performed at proposal. However, the calculations have changed due to the incorporation of additional data provided by two model mine studies submitted during the comment period.

EPA's complete benefits assessment can be found in *Benefits Assessment of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (hereafter referred to as the "Benefits Assessment"). A detailed summary is also contained in Chapter 8 of *Economic and Environmental Impact Analysis of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (hereafter referred to as the "EA").

A. Coal Remining Subcategory

The water quality improvements associated with today's rule for remining depend on (1) changes in annual permitting rates for remining; (2) characteristics of sites selected for remining; and (3) the type and magnitude of the environmental improvements expected from remining. Remining permits in Pennsylvania increased by an estimated factor of three to eight following State implementation of a regulation that is similar to today's remining rule. EPA believes that implementing today's rule is likely to have a similar effect on other States with remineable coal reserves and similar abandoned mine drainage problems. The type and magnitude of site-specific water quality improvements under the final rule are not expected to be dramatically different than those that have occurred under existing requirements in Pennsylvania.

Of approximately 9,500 miles of acid mine drainage impacted streams in States where coal mining has previously occurred (Record Section 3.2.2), EPA estimates that remining operations have the potential to improve 2,900 to 4,800 miles of impacted streams, and that 1,100 to 2,100 miles of these streams may demonstrate significant improvement. EPA estimates that one to six miles of stream may see improvement for every 1,000 acres of abandoned mine land reclaimed. Based on an average of 38 acres of AML reclamation per permit, EPA estimates approximately 0.04 to 0.2 miles of stream improvement per remining project. EPA estimates that AML sites affected by the rule have an average of 70 highwall feet per acre. EPA also estimates that an additional 216,000 to 307,000 feet of highwall (41 to 58 miles) will be targeted for removal each year as a result of today's rule.

EPA assessed the potential impacts of remining BMPs on water quality using pollutant loadings data from pre-existing discharges at 13 mines included in EPA's Coal Remining Database (Record Section 3.5.1). Approximately 58 percent of the post-baseline observations showed a decrease in mean pollutant loadings. Approximately half of these sites (27 percent of the post-baseline observations) showed a statistically significant decrease in loadings. The 13 mines examined by EPA are active remining operations; decreases in pollutant loads are expected to become more significant with time. In comparison, Pennsylvania's Remining Site Study of 112 closed remining sites (Record Section 3.5.3) found that the Pennsylvania program for these sites was effective in improving or eliminating acidity loading in 45 percent of the pre-existing discharges, total iron loading in 44 percent of the discharges, and total manganese in 42 percent of the discharges. The Pennsylvania Remining Site Study focused on sites reclaimed to at least Stage II bond release standards, so that the mitigating impacts of BMPs had ample time to take effect.

Remining generates human health benefits by reducing the risk of injury at AML sites and reducing discharge of acid mine drainage to waterways. However, the human health benefits associated with consumption of water and organisms are not likely to be significant because (1) acid mine drainage constituents are not bioaccumulative, and adverse health effects associated with fish consumption are therefore not expected; and (2) public drinking water sources are

treated for most acid mine drainage constituents associated with adverse health effects. Eliminating safety hazards by closing abandoned mine openings, eliminating highwalls, stabilizing unstable spoils, and removing hazardous waterbodies potentially prevents injuries and saves lives.

EPA evaluated the potential impacts to human and aquatic life by comparing the number of water quality criteria exceedances in receiving waterbodies in the baseline (pre-remining) and post-baseline sampling periods for 11 remining sites in the Coal Remining Database for which relevant data exist. Exceedances of the human health criterion for pH (water plus organism consumption, field pH) were eliminated at two sites while exceedances of chronic aquatic life criteria were eliminated for pH (field pH) and iron at two sites. Exceedances of the acute aquatic life criterion for manganese also were eliminated at two sites. Although surface water quality data examined indicate changes in the number of water quality exceedances due to remining, nine of the 11 sites consist of active remining operations where the full environmental impacts of BMPs have yet to be realized. Correlations between pre-existing discharge loads and pollutant concentrations in receiving water can be used to determine the extent to which remining BMPs are responsible for changes in surface water quality. However, the lack of sufficient data on relevant sources of acid mine drainage upstream from pre-existing discharges at the selected mine sites made it difficult to estimate these correlations.

Remining and the associated reclamation of AML is expected to generate ecological and recreational benefits by (1) improving terrestrial wildlife habitat, (2) reducing pollutant concentrations below levels that adversely affect aquatic biota, and (3) improving the aesthetic quality of land and water resources. EPA was able to quantify and monetize some of the benefits expected from increased remining using a benefits transfer approach. The benefits transfer approach relies on information from existing benefit studies applicable to assessing the benefits of improved environmental conditions at remining sites. Benefits are estimated by multiplying relevant values from the literature by the additional acreage reclaimed under the remining subcategory.

EPA used the following assumptions to estimate annual benefit values for ecological improvements: (1) 3,100 to 4,400 acres will be permitted annually under the subcategory; (2) 57 percent of the acres permitted will actually be reclaimed (1,800 to 2,500 acres) ; (3) 38 percent to 44 percent of acres reclaimed per year are expected to be associated with significant decreases in acid mine drainage (AMD) pollutant loads to surface water bodies; and (4) annualized benefits from remining begin to occur five years after permit issuance and are calculated for a five year period. EPA assumed that 57 percent of the acres permitted would actually be reclaimed based on a study of 105 remining permits in Pennsylvania (Hawkins, 1995, *Characterization and Effectiveness of Remining Abandoned Coal Mines in Pennsylvania*). The study found that on average, a remining site had 67 AML acres, of which 38 acres (or 57 percent) were actually reclaimed. The assumption that 38 to 44 percent of acres reclaimed would be associated with significant decreases in AMD pollutant loads was based on the results of Pennsylvania's study of 112 closed remining sites. A detailed explanation of all assumptions is provided in the Benefits Assessment document for the proposed rule.

EPA estimated water-related ecological benefits using the benefits transfer approach with values taken from a benefit-cost study of surface mine reclamation in central Appalachia by Randall et al. (1978, *Reclaiming Coal Surface Mines in Central Appalachia: A Case Study of the Benefits and Costs*). EPA's analysis is based on two values from the study: (1) Degradation of life-support systems for aquatic and terrestrial wildlife and recreation resources, valued at $37 per acre per year (1998$); and (2) aesthetic damages, valued at $140 per acre per year (1998$). EPA estimated nonuse benefits using a widely accepted approach developed by Fisher and Raucher (1984, *Intrinsic Benefits of Improved Water Quality: Conceptual and Empirical Perspectives*), where nonuse benefits are estimated as one-half of the estimated water-related recreational use benefits. The estimated water-related benefits range from $0.53 to $0.89 million per year.

Reclaiming the surface area at AML sites will enhance the sites' appearance and improve wildlife habitats, positively affecting populations of various wildlife species, including game birds. This is likely to have a positive effect on wildlife-oriented recreation, including hunting and wildlife viewing. EPA estimated land-related ecological benefits using the benefits transfer approach with values taken from a study of improved opportunities for hunting and wildlife viewing resulting from open space preservation by Feather et al. (1999, *Economic Valuation of Environmental Benefits and the Targeting Conservation Programs*). EPA's analysis is based on two values from the study: (1) The average wildlife viewing value of $21 per acre per year; and (2) the improved pheasant hunting value of $7 per acre per year. Based on an aggregate value of $28 per acre per year, EPA estimates land-related benefits of $0.20 to $0.29 million per year.

The sum of the estimated monetary values of the different benefit categories results in total annual benefits of $0.73 to $1.17 million from implementing the remining subcategory. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include human health and safety impacts. EPA examined a number of data sources to determine the annual rate of accidents associated with exposed highwall and other hazardous features of AML in order to estimate the benefits attributable to the decreased risk resulting from remining safety improvements. EPA contacted State and Federal agencies responsible for AML statistics as well as agencies responsible for maintaining public health statistics and concluded that the necessary information was not available to support such an analysis.

B. Western Alkaline Coal Mining Subcategory

Only a small percentage of potentially affected western coal mines discharge to permanent or perennial water bodies. Information about receiving waters is available for 39 of the existing surface coal mines affected by this rule, and 30 of these discharge to intermittent or ephemeral creeks, washes, or arroyos. Only two of these mines list a permanent water body as the primary receiving water. It is therefore difficult to describe the benefits of the Western Alkaline Coal Mining Subcategory in terms of the use designations referenced in the section 101(a) goals of the Clean Water Act.

The environmental conditions and naturally high sediment yields in arid and semiarid coal regions were discussed in Section IV of the proposal. The potential impacts of the predominant use of sedimentation ponds to control settleable solids in these regions include reduced sediment loads to natural drainage features, reduced downstream flood peaks and runoff volumes, and downstream channel bed and bank changes. The environmental and water quality effects of these hydrologic impacts include: (1) Reducing ground water recharge, (2)

shrinking biological communities consisting of and reliant upon riparian and hydrophytic vegetation, (3) degrading downstream channel beds by cleaner waters, resulting from retention of water and sediment runoff, and (4) accelerating erosion. Because of the depletion of runoff associated with such ponds, the potential impact to endangered fish species exists in some watersheds in the West. Therefore, construction of sedimentation ponds in Utah, Colorado or Southern Wyoming that results in an additional water depletion to the upper Colorado or Platte River system triggers formal Section 7 Endangered Species Act consultation with the U.S. Fish and Wildlife Service.

Site-specific alternative sediment control plans incorporating BMPs designed and implemented to control sediment and erosion have the potential to provide both land and water-related benefits. Land-related benefits include decreased surface area disturbance, increased soil conservation, and improved vegetation. Surface disturbance is estimated to decrease by approximately 600 acres per year across all existing potentially affected surface mine sites in the western region. Vegetative cover may increase by five percent when BMPs are used.

EPA was only able to monetize land-related benefits associated with decreased surface area disturbance. Hunting benefits from increased availability of undisturbed open space were estimated to be between $0.37 and $2.46 per acre per year based on Feather et al. (1999) and Scott (Scott, M., G.R. Bilyard, S.O. Link, C.A. Ulibarri, H. Westerdahl, P.F. Ricci, and H.E. Seely. 1998. Valuation of Ecological Resources and Functions. *Environmental Management, Vol. 22, No 1:49–68*). Annual land-related benefits of the subcategory range from $2,000 to $13,000 per year, based on the value of enhanced hunting opportunities. However, this estimate does not account for a number of benefit categories, including nonuse ecological benefits that may account for the major portion of land-related benefits in relatively unpopulated areas such as those affected by this rule.

Water-related benefits include improved hydrologic and fluvial stability in the watersheds affected by western mining operations. These benefits will be site-specific and depend upon the nature of environmental quality changes; the current in-stream water uses, if any, and; the population expected to benefit from increased water quantity. EPA estimated water-related benefits using the estimated mean "willingness to pay" (WTP) values for preservation of perennial stream flows adequate to support abundant stream side plants, animals and fish from Crandall et al. (1992, *Valuing Riparian Areas: A Southwestern Case Study*). The WTP value is applied to water-based recreation consumers residing in counties affected by western mining operations discharging to, or affecting, water bodies with perennial flow. EPA identified seven perennial streams located in six counties that are likely to be affected by today's rule. The estimated monetary value of recreational water-related benefits for these streams ranges from $25,000 to $488,000. As noted above, EPA estimates that nonuse benefits are equal to one-half of the water-related recreational benefits, or $12,500 to $244,000 per year.

Total estimated annualized benefits for the subcategory range from $39,500 to $745,000. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include increased vegetative cover and some additional recreational and nonuse benefits associated with western alkaline coal mine reclamation areas. A more detailed discussion of the benefits analysis is contained in the EA.

IX. Economic Analysis

A. Introduction, Overview, and Sources of Data

This section presents EPA's estimates of the economic impacts attributed to the final regulation. The economic impacts are evaluated for each subcategory for BPT, BCT, BAT, and NSPS as applicable. A description of the regulatory requirements for each subcategory is given in Section V of today's document. EPA's detailed economic impact assessment can be found in *Economic and Environmental Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (referred to as the "EA"). Additional information can be found in *Coal Remining and Western Alkaline Mining: Economic and Environmental Profile,* which EPA prepared in support of the proposed rulemaking.

This section of today's document describes the segment of the coal industry that would be impacted by the final rule (*i.e.*, the number of firms and number of mines that would incur costs or realize savings under the final rule), the financial condition of the potentially affected firms, the aggregate cost or cost savings to that segment, and the economic impacts attributed to the final rule. The section also discusses impacts on small entities and presents a cost-benefit analysis. This discussion will form the basis for EPA's findings on regulatory flexibility, presented in Section X.B. All costs are reported in 1998 dollars unless otherwise noted.

EPA developed this regulation using an expedited rulemaking procedure. Therefore, EPA's economic analysis relied on industry profile information voluntarily provided by stakeholders, on data compiled from individual mining permits, and on data from publicly available sources. For the Coal Remining Subcategory, EPA obtained information on abandoned mine lands from the Abandoned Mine Lands Information System (AMLIS) maintained by the Office of Surface Mining (Record Section 3.5.2), the National Abandoned Lands Inventory System (NALIS) database maintained by the Pennsylvania Department of Environmental Protection (Record Section 3.5.5), and a survey of States conducted by the Interstate Mining Compact Commission (Record Section 3.2.2). For the Western Alkaline Coal Mining Subcategory, EPA relied on industry profile data developed and submitted to EPA by the Western Coal Mining Work Group as described in Section V of the proposal. Specifically, the work group provided data on coal mine operators, mine locations, annual production, reclamation permit numbers, acres of land reclaimed, and reclamation bond amounts. This information is included in Section 3.3 of the Record.

Data on the coal industry as a whole, including coal production, employment, and prices, as well as information on individual western alkaline underground mines, were obtained from various Energy Information Administration sources, including the 1997 *Coal Industry Annual,* the 1998 *Annual Energy Outlook,* and the 1992 *Census of Mineral Industries.* EPA used the Security and Exchange Commission's Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks, for financial data and information on corporate structures. EPA also used a database maintained by Dun & Bradstreet, which provides estimates of employment and revenue for many privately held firms, and obtained industry financial performance data from Leo Troy's *Almanac of Business and Industrial Financial Ratios.*

B. Method for Estimating Compliance Costs

The costs and savings of the final regulation are associated with BMP

implementation, baseline monitoring, and performance monitoring. For each subcategory, EPA estimated economic baseline conditions based on existing State and Federal regulations and current industry practices. For remining, EPA assumed as economic baseline conditions remining under a Rahall permit, pursuant to section 301(p).

1. Coal Remining Subcategory

As discussed in the proposal, EPA projected costs for each remining site by calculating the cost of monitoring requirements for determining baseline, the cost of potential increases in reclamation permit numbers, acres of land reclaimed, and reclamation bond amounts. This information is included in Section 3.3 of the Record.

Data on the coal industry as a whole, including coal production, employment, and prices, as well as information on individual western alkaline underground mines, were obtained from various Energy Information Administration sources, including the 1997 *Coal Industry Annual*, the 1998 *Annual Energy Outlook*, and the 1992 *Census of Mineral Industries*. EPA used the Security and Exchange Commission's Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks, for financial data and information on corporate structures. EPA also used a database maintained by Dun & Bradstreet, which provides estimates of employment and revenue for many privately held firms, and obtained industry financial performance data from Leo Troy's *Almanac of Business and Industrial Financial Ratios*.

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1. Coal Remining Subcategory

As discussed in the proposal, EPA projected costs for each remining site by calculating the cost of monitoring requirements for determining baseline, the cost of potential increases in compliance monitoring requirements, and the potential costs associated with implementing the required pollution abatement plan. To assess the increased baseline determination and monitoring requirements of the rule, EPA evaluated current State requirements for operations permitted under the Rahall provision and calculated the costs under this final regulation that exceed the current State requirements. Current State sample collection requirements for determining and monitoring baseline are included in the Record at Section 3.4.

Although EPA estimated that the Coal Remining Subcategory would be applicable to 64 to 91 remining sites and 3,810 to 5,400 acres annually, EPA projects that fewer sites would realize costs or benefits from this proposal. As noted throughout the proposal, the Commonwealth of Pennsylvania has an advanced remining program and EPA does not believe that the rule will have a measurable impact on Pennsylvania's remining activities. Therefore, EPA did not include Pennsylvania's remining sites in the estimation of costs or benefits. EPA's cost and benefit analysis were calculated for a total of 43 to 61 sites representing 3,100 to 4,400 permitted acres each year. EPA estimates that approximately 1,800 to 2,500 of these acres would actually be reclaimed each year. Table IX. B.1 shows the various estimates EPA used in the estimation of costs and benefits (these are the same estimates used in the proposal).

TABLE IX. B.1: ANNUAL ESTIMATES OF AFFECTED REMINING SITES USED IN THE ECONOMIC ANALYSES

Additional sites permitted	Number of sites	Acres	Used in analysis of
All types, all States (initial estimate)	64–91	3,812–5,401	
All types, excluding PA	43–61	3,111–4,407	Monitoring costs for selected States; NPDES permitting authority costs.
10% of surface & underground sites only (no coal refuse piles), excluding PA.	3.9–5.6	309–438	Costs of additional BMPs.
Additional acres reclaimed: (57% of acres permitted, all types excluding PA).	.....	1,773–2,512	Benefits from recreational use of reclaimed land.
Additional acres reclaimed expected to have significant decreases in AMD pollutant loads (37.6–44.4% of additional reclaimed acres).	.....	667–1,115	Benefits from recreational use of improved water bodies; Aesthetic improvements in water bodies; Non-use benefits.

2. Western Alkaline Coal Mining Subcategory

EPA's *Coal Remining and Western Alkaline Mining: Economic and Environmental Profile* prepared for proposal provides profile information on the 47 surface coal mines and 24 underground coal mines initially believed to be in scope of the subcategory. As discussed in the proposal, EPA determined that one of the surface mines profiled was already in the final reclamation stage and would not be affected by the rule. EPA also determined that any savings to underground producers were likely to be small given the limited acreage and lack of complexity associated with these reclamation areas, and did not calculate these benefits. The remainder of this section considers only the 46 active existing surface mines in its discussion.

In the proposal, the only incremental cost attributed to the subcategory was associated with the watershed modeling requirements. Although information provided by OSMRE during the comment period (Record Section 7.2) indicates that all coal mine operators already perform modeling (to support their SMCRA permit applications) that is sufficient for purposes of this rulemaking, EPA has chosen to maintain the proposed costing approach that conservatively allows for some additional modeling costs due to this regulation.

C. Costs and Cost Savings of the Final Rule

1. Coal Remining Subcategory

Under the final rule, EPA is requiring operators to conduct one year of monthly sampling to determine the baseline pollutant levels for net acidity, iron (total), TSS, and manganese (total) (see part 434 Appendix B). Although most States with remining activities

have similar requirements, remining sites in Alabama and Kentucky will be required to add six samples annually. EPA did not have data for Illinois, Indiana, or Tennessee because the remining operations that occur in these States do not incorporate Rahall provisions for pre-existing discharges. EPA has conservatively assumed sample collection costs for 12 additional samples annually for these States. Information representing current state sampling requirements is included in the Record at Section 5.

EPA has generated compliance costs based on monthly monitoring. Most States already have similar requirements, with the exception of Ohio, which currently requires quarterly modeling. Again, EPA did not have data for Illinois, Indiana, or Tennessee because these States do not incorporate Rahall provisions in their remining permits. For these States, EPA has conservatively assumed that an additional 12 compliance monitoring samples per year would be required for five years.

Because each remining site will typically have more than one pre-existing discharge, EPA reviewed Pennsylvania remining sites to estimate the average number of pre-existing discharges per site. EPA used this calculated average of four pre-existing discharges per site for estimating baseline determination and compliance monitoring costs (Record Section 3.3.1). Additionally, EPA assumed that remining operators would have to purchase and install flow weirs to comply with the baseline monitoring requirements in the States that do not currently incorporate Rahall provisions in their remining permits. These assumptions result in an upper-bound estimate of additional monitoring costs for the 43 to 61 potentially affected sites per year.

EPA estimates the total annual incremental monitoring costs to be in the range of $133,500 to $193,500. Of this, between $83,000 and $120,000 is associated with incremental baseline monitoring requirements and between $50,500 and $73,500 results from incremental compliance monitoring during the five-year mining period. Detailed assumptions and calculations are presented in the EA.

In addition to baseline determination and compliance monitoring, remining operators must develop and implement a site-specific pollution abatement plan for each remining site. In many cases, EPA believes that the requirements for the pollution abatement plan will be satisfied by an approved SMCRA plan. However, EPA recognizes that some operators may be required to implement additional or more intensive BMPs under the rule beyond what is included in a SMCRA-approved pollution abatement plan.

EPA developed a general estimate of the potential costs of additional BMPs based on review of the existing remining permits contained in the Coal Remining Database (Record Section 3.5.1) , and on information provided in the *Coal Remining BMP Guidance Manual*. EPA determined that the most likely additional BMP that NPDES permit writers might require would be a one-time increase in the amount of alkaline material used as a soil amendment to prevent or ameliorate the formation of acid mine drainage. EPA assumed that an average mine facility requiring additional BMPs would need to increase its alkaline addition by a rate of 50 to 100 tons per acre to meet the additional NPDES permit review requirements. EPA estimated an average cost for alkaline addition of $12.90/ton, and assumed that 10 percent of surface and underground remining sites would be required to incur these additional BMP costs. Because the typical BMP for coal refuse piles is simply removal of the pile, no incremental BMP costs would be incurred for these sites. Based on EPA's estimate that between 309 and 438 acres could be required to implement additional or more intensive BMPs each year, the estimated annual cost of additional BMP requirements would range from $199,500 to $565,000.

Based on the above assumptions, the total estimated incremental costs associated with the final rule range from $333,000 to $758,500 per year for the Coal Remining Subcategory. These costs are based on EPA's estimates of what is likely to happen in the future, and they would be incurred by new remining operations. Table IX. C.1 summarizes the incremental costs associated with the subcategory. These are the same estimates presented in the proposal.

TABLE IX. C.1.—ANNUAL COSTS FOR THE REMINING SUBCATEGORY
[1998$]

Monitoring Costs	$133,500–$193,500
Additional BMPs	$199,500–$565,000
Total Compliance Costs	*$333,000–$758,500*

2. Western Alkaline Coal Mining Subcategory

The cost impacts of the subcategory will vary, depending on site-specific conditions at each eligible coal mine. However, based on available data and information, EPA believes that the costs of reclamation under today's rule will be less than or equal to reclamation costs for Subpart E for each individual operator, and thus for the subcategory as a whole.

EPA expects that the sediment control plan will consist entirely of materials generated as part of the SMCRA permit application. The SMCRA permit application process requires that a coal mining operator submit an extensive reclamation plan, documentation and analysis to OSMRE or the permitting authority for approval. Based on these requirements, EPA believes that plans developed to comply with SMCRA requirements will fulfill the EPA requirements for sediment control plans. The requirement to use watershed modeling techniques is not inconsistent SMCRA permit application requirements. As discussed in the proposal, EPA believes that none of the coal mine operators will incur incremental modeling costs. However, because modeling requirements for this regulation may differ in some circumstances from SMCRA requirements, EPA has conservatively assumed that each surface mine operator will incur $50,000 in watershed modeling costs in the economic impact analysis. Total incremental modeling costs (annualized at seven percent over ten years) for the 46 surface mines are estimated to be $327,000 based on this assumption.

EPA projects that cost savings for this subcategory would result from lower capital and operating costs associated with implementing the BMP plans, and from an expected reduction in the reclamation bonding period. The cost savings for controls based on BMPs were calculated for three representative model mines differentiated by geographic region: Desert Southwest (DSW), Intermountain (IM), and Northern Plains (NP). The cost models were submitted by the Western Coal

Mining Work Group (WCMWG, 1999a, 2001). The cost models are discussed in detail in the *Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory* and are included in the Record at Section 3.3.2. The cost estimates for each model mine relied on data taken from case study mine permit applications, mine records, technical resources and industry experience. The models estimated capital costs (design, construction and removal of ponds and implementation of BMPs) and operating costs (inspection, maintenance, and operation) over the anticipated bonding period.

EPA classified each mine by region within the subcategory (DSW, IM, or NP). Cost savings for reclamation at each mine were calculated by extrapolating the cost savings per disturbed acre calculated for the appropriate model mine. Costs are discounted at a seven percent real rate over a ten-year period. Although individual input data changed with the addition of the two new representative model mine types, EPA's methodology did not change from proposal. The present value of cost savings for the DSW model mine was calculated to be $672,000 ($1,760 per acre). For the IM model mine, the present value of expected cost savings is $199,000 ($522 per acre). Finally, the NP model mine is expected to achieve a present value of cost savings of $235,000 ($617 per acre) under the new subcategory.

EPA used the projected disturbance acreage divided by the remaining mine life to estimate the annual acres reclaimed at each existing mine site. This information was available for 26 mines: two DSW mines, one IM mine, and 23 NP mines. The 20 mines without data available on expected mine life and disturbance acres are located in the NP (18 mines) and IM (two mines) regions. EPA used the average annual acres reclaimed for mines with available data in these two regions (305 acres per year) to estimate reclamation cost savings. For each mine site, annual acres reclaimed were multiplied by the present value of savings per acre for the appropriate regional model mine and totaled. Estimated annual reclamation cost savings total $12.7 million for the 46 producing surface mines in the subcategory, significantly smaller than the estimate for proposed rulemaking of $30.8 million. The decrease in total estimated annual reclamation savings is primarily due to the lower savings per acre at IM and NP mines which comprise the majority of the subcategory. A detailed analysis of this difference as it relates to the additional model mines that account for different geographical features is contained in the EA.

EPA has also calculated cost savings that may result from earlier Phase II bond release. The OSMRE hydrology requirement to release performance bonds at Phase II, requires compliance with the previously applicable 0.5 ml/L effluent standard for SS (30 CFR part 800.40(c)(1)). The Western Coal Mining Work Group, in its draft Mine Modeling and Performance Cost Report (Record Section 3.3.2) estimates that the typical post-mining Phase II bonding period can be ten years or more under the previous effluent guidelines. Reclamation areas must achieve considerable maturity before they are capable of meeting this standard. The BMP-based approach in today's rule uses the inspection of BMP design, construction, operation and maintenance to demonstrate compliance instead of the current sampling and analysis of surface water drainage for reclamation success evaluations. The report estimates that the BMP-based approach would reduce the time it takes reclaimed lands to qualify for Phase II bond release by about five years. 3

EPA used the following assumptions to estimate cost savings due to earlier Phase II bond release: (1) A post-mining Phase II bonding period of ten years under the numeric effluent guidelines and five years under the new subcategory; (2) twenty-five percent of the reported bond amount would be released at the end of Phase II; and (3) surety bonds were used, with annual fees between $3.75 and $5.50 per thousand. Twenty-six mines provided information necessary to calculate associated bond savings. The total estimated savings for these mines range from $0.2 to $0.3 million when annualized at seven percent over the five-year permit period. EPA assumes that the remaining 20 mines for which savings could not be calculated would achieve the average savings per mine ($7,200 to $10,600) resulting in total annualized savings between $0.1 and $0.2 million. Detailed assumptions and calculations are contained in the EA. Projected bond savings for the entire subcategory thus total from $0.3 to $0.5 million. These estimated bond savings are about 2 percent less than the estimated bond savings presented at proposal. The difference in the two estimates is entirely attributable to lower expected disturbance acres per permit period in IM and NP mines.

The estimated net savings in compliance costs associated with the subcategory, considering the savings to mining operations in sediment control and bonding costs, is estimated to be approximately $12.8 million, as shown in Table IX. C.2.

TABLE IX. C.2.—ANNUAL COST SAVINGS FOR THE WESTERN ALKALINE COAL MINING SUBCATEGORY

[$1998]

Modeling Costs	($ 327,000)
Sediment Control Cost Savings	$12,721,000
Earlier Phase 2 Bond Release Savings	$341,900–$501,400
Total Compliance Cost Savings	$12,735,900–$12,895,400

D. Economic Impacts of the Final Rule

1. Economic Impacts for the Coal Remining Subcategory

As discussed in Section V, EPA is promulgating BPT, BCT, BAT, and NSPS that have the same technical basis. EPA believes that the final rule will not impact existing remining permits. For new permits, remining operators will have the ability to choose among potential remining sites, and will only select sites that they believe are economically achievable to remine. Furthermore, any additional BMPs required by the NPDES authority under the final rule will be site-specific. Today's requirements will not create any barriers to entry in coal remining, but instead are specifically designed to encourage new remining operations. Hence, the Agency finds no significant negative impacts to the industry associated with the subcategory.

The implementation of a pollution abatement plan containing BMPs may impose additional costs beyond what is included in a SMCRA-approved pollution abatement plan. At the same time, the profits may increase at remining sites because the new regulations provide an incentive to mine coal from abandoned mine land areas

that may have been avoided in the absence of implementing regulations. The subcategory will also affect the relative profitability of remining different types of sites, with the potential to encourage remining of the sites with the worst environmental impacts. An analysis by the Department of Energy (DOE) of potential remining sites estimated an average coal recovery of between 2,300 and 3,300 tons per acre of remined land (1993, *Coal Remining: Overview and Analysis*). At these coal recovery rates, the estimated steady state annual increase in acres being remined would produce between 7.1 and 14.5 million tons of coal per year. This represents only 1.5 to 3.1 percent of total 1997 Appalachian coal production of 468 million tons. The same DOE report noted that, given the general excess capacity in the coal market, it is likely that coal produced from new remining sites will simply displace coal produced elsewhere, with no net increase in production overall. The Coal Remining Subcategory is therefore not expected to have a significant impact on overall coal production or prices.

2. Economic Impacts for the Western Alkaline Coal Mining Subcategory

As discussed in Section V, EPA is promulgating BPT, BAT, and NSPS limitations that have the same technical basis. EPA concludes that all economic impacts are positive, that compliance will result in a cost savings to the industry, and that the rule is economically achievable. Because reclamation costs under today's rule will be less than or equal to those previously incurred by all individual operators, and thus, to the subcategory as a whole, no facility closures or direct job losses associated with post-compliance closure are expected. However, EPA did estimate potential changes in labor requirements attributable to the rule caused by changes in labor hours associated with the types of erosion and sediment control structures used.

EPA based its estimates of changes in labor requirements on the detailed cost estimates developed for the three model mines submitted by the WCMWG (1999, 2001). Dividing the full time equivalent (FTE) reduction for each model mine by the 10 year project life results in an estimated annual reduction of 0.22 FTE at the DSW model mine, 0.11 FTE at the NP model mine, and 0.09 FTE at the IM model mine. Applying these reductions in FTE to each mine in the appropriate region results in an estimated annual reduction of 5.2 FTEs per year. This represents less than 0.1 percent of the total 1997 coal mine employment (6,862 FTEs) in the western alkaline region States.

The cost savings associated with the subcategory are not expected to have a substantial impact on the industry average cost of mining per ton of coal, and therefore are not expected to have major impacts on coal prices. While the savings are substantial in the aggregate (and for some individual mine operators), on average they represent a small portion of the total value of coal produced from the affected mines. As described in the EA, the overall estimated cost savings are, on average, 3 cents per ton or about 0.4 percent of the value of production. In addition, the value of production reflects the value of coal at the minehead. Transportation costs of coal, especially from the western alkaline region to the Midwestern utilities and other consumers, are significant and the estimated savings as a percent of delivered price will be smaller than 0.4 percent. Thus, as with the Coal Remining Subcategory, the Western Alkaline Coal Mining Subcategory is not expected to result in significant industry-level changes in coal production or prices.

EPA is promulgating NSPS equivalent to the limitations for BPT and BAT for the Western Alkaline Coal Mining Subcategory. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. Specifically, to the extent that existing sources have already incurred costs associated with installing sedimentation ponds, new sources would be able to avoid such costs. There is nothing about today's rule that would give existing operators a cost advantage over new mine operators; therefore, NSPS limitations will not present a barrier to entry for new facilities.

E. Additional Impacts

1. Costs to the NPDES Permitting Authority

Additional costs will be incurred by the NPDES permitting authority to review new permit applications and issue revised permits based on the rule. Under the final rule, NPDES permitting authorities will review baseline pollutant levels and pollution abatement plans for the Coal Remining Subcategory and watershed modeling results and sediment control plans for the Western Alkaline Coal Mining Subcategory.

EPA estimates that permit review will require an average of 35 hours of a permit writer's time per site and that permit writers receive an hourly wage of $31.68. Based on these assumptions, total annual costs to the NPDES permitting authorities range from $47,500 to $67,500 for the 43 to 61 additional sites that can be expected to be permitted under the Coal Remining Subcategory. An upper-bound estimate of costs associated with implementing the western subcategory assumes that all 46 existing surface mine permits are renewed. The total incremental annual cost would be $12,500 when annualized over a 5-year permit (using a seven percent discount rate). Total additional permit review costs for the rule are therefore estimated to be between $60,000 and $80,000 per year. A detailed analysis is contained in the EA.

2. Community Impacts

EPA considered whether the rule would significantly alter the competitive position of coal produced in different regions of the country, or lead to growth or reductions in employment in different regions and communities. EPA concluded that the final rule would not have a significant impact on relative coal production in the West versus the East. The annualized cost savings estimates for Western Alkaline surface mines affected by today's regulation average about $0.033 per ton, or only 0.4 percent of the value of coal production from these mines. Data from the Department of Energy indicate that the average cost of rail transportation for coal from western to midwestern States is approximately $0.00912 per ton-mile. Therefore, the potential cost savings that would be realized by this rule in western mines would not affect the price competitiveness of coal because Western Alkaline mines would be able to ship their coal about 4 additional miles while maintaining the same delivered price. The coal from western mines appears to compete directly with eastern coal in about eight States, where the $0.033 savings per ton comprises only 0.13 percent of the average delivered price (the average delivered price of coal was about $25.51 per ton in 1998). Therefore, EPA concluded that the cost savings generated for Western Alkaline Coal Mines as a result of today's rule will have minimal impact on coal production in the West versus the East coal regions.

For the Coal Remining Subcategory, it is likely that production and employment will shift toward eligible abandoned mine lands, but will not to increase national coal production and

employment or affect coal prices significantly overall.

EPA projects that impacts of the Western Alkaline Coal Mine Subcategory on mine employment will also be minor. As discussed above, EPA estimated a reduction in labor requirements of 5.2 FTEs per year by extrapolating from the model mine results for each region. This represents less than 0.1 percent of the total 1997 coal mine employment in the western alkaline region States. The estimated annual 5.2 FTE direct mine job losses would result in an additional 8.7 FTE indirect job losses based on RIMSII regional employment multipliers (U.S. Bureau of Economic Analysis, *Regional Input-Output Modeling Systems, "RIMSII"*). Therefore, the total impact on employment, direct and indirect, that may result from the Western Alkaline Coal Mining Subcategory is a reduction of approximately 13.9 FTEs per year. This reduction in employment might be offset if lower costs under the subcategory encourage growth in coal mining in the western alkaline region.

3. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the final effluent limitations guidelines and standards. U.S. coal exports consist primarily of Appalachian bituminous coal, especially from West Virginia, Virginia and Kentucky (U.S. DOE/EIA, Coal Data: A Reference; U.S. DOE/EIA Coal Industry Annual 1997). Coal imports to the U.S. are insignificant. Impacts are difficult to predict, since coal exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. However, no foreign trade impacts are expected given the relatively small projected increase in production and projected lack of impact on costs of production or prices.

F. Cost Effectiveness Analysis

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of regulatory options in removing toxic and non-conventional pollutants. Cost-effectiveness is calculated as the incremental annual cost of a pollution control option per incremental pollutant removal. The results for an option are considered relative to another option or to a benchmark, such as existing treatment. In EPA's cost-effectiveness analysis for effluent guidelines, pollutant removals are measured in toxicity normalized units called "pounds-equivalent." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the technology will be in removing pollutants, taking into account their toxicity. While not required by the CWA, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants.

While cost-effectiveness results are usually reported in the Notice of Final Rulemaking for effluent guidelines, such results are not presented in today's document because of the nature of the two subcategories. For the Coal Remining Subcategory, EPA is unable to predict pollutant reductions that would be achieved at future remining operations. As described in Section V, it is difficult to project the results, in terms of measured improvements in pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA is therefore unable to calculate cost-effectiveness. For the Western Alkaline Coal Mining Subcategory, cost-effectiveness was not calculated because there are no incremental costs attributed to the rule.

G. Cost Benefit Analysis

EPA estimated and compared the costs and benefits for each of the subcategories. Both subcategories have the potential to create significant environmental benefits at little or no additional cost to the industry. The monetized annual benefit estimates for the Coal Remining Subcategory ($734,000 to $1,175,500) substantially outweigh the projected annual costs ($380,500 to $826,000).

In addition to the monetized benefits, the increase in remining is projected to result in the removal of some 216,000 to 307,000 feet of highwall each year. As described in the EA, EPA was not able to find reliable data to evaluate the decreased risk of serious injury or death resulting from remining safety improvement. It is clear that AMLs are dangerous sites and that implementation of the Coal Remining Subcategory will result in benefits by making these sites less hazardous. The increase in remining also has the potential to recover an estimated 7.1 to 14.5 million tons of coal per year that might otherwise remain unrecovered, with a value of approximately $188.5 to $385.0 million (based on an average 1997 value per ton of coal in Appalachia of $26.55).

The Western Alkaline Coal Mining Subcategory is projected to result in net cost savings while increasing environmental benefits. The industry compliance cost savings associated with the final rule arise from reduced costs for sediment control and earlier Phase II bond release. Total annual cost savings to society are expected to be approximately $13 million. Annual environmental benefits are valued between $39,500 and $745,000—with the majority of benefits resulting from recreational use of waters with improved water flow. Table IX.G.1 summarizes the total social costs/cost savings and benefits attributed to today's rulemaking.

TABLE IX.G.1.—TOTAL ANNUAL SOCIAL COSTS/(COST SAVINGS) AND BENEFITS OF THE RULE

[$1998]

Social Costs/Cost Savings:	
Total Social Costs—Remining	$380,500–$826,000
Total Social Cost Savings—Western Alkaline	($12,723,500–$12,882,500)
Total Social Cost Savings	($12,343,000–$12,056,500)
Monetized Social Benefits:	
Total Monetized Benefits—Remining	$734,000–$1,175,500
Total Monetized Benefits—Western Alkaline	$39,500–$745,000
Total Monetized Benefits	$773,500–$1,920,500

X. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has 500 or fewer employees (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, I certify that this action will not have significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA projects that the new subcategory for western alkaline mines results in cost savings for all small surface mine operators. For all small underground mine operators, EPA projects no incremental costs, and the Agency believes that many are likely to experience some cost savings. Section IX of this document discusses the likely cost savings associated with the subcategory in more detail. As described in Section V of this document, the previous regulations at 40 CFR part 434 create a disincentive for remining by imposing limitations on pre-existing discharges for which compliance is cost prohibitive. Despite the statutory authority for exemptions from these limitations provided by the Rahall Amendment, coal mining companies and States remain hesitant to pursue remining without formal EPA guidelines. The remining subcategory provides standardized procedures for developing effluent limits for pre-existing discharges, thereby eliminating the uncertainty involved in interpreting and implementing current Rahall requirements. This subcategory is intended to remove barriers to the permitting of remining sites with pre-existing discharges, and is therefore expected to encourage remining activities by small entities. Thus, we have concluded that today's final rule will relieve regulatory burden for all small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA 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). This rule will be effective February 22, 2002.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0239.

Today's rule requires an applicant to submit baseline monitoring and a pollution abatement plan for coal mining operations involved in remediation of abandoned mine lands and the associated acid mine drainage during extraction of remaining coal resources. In addition, today's rule requires an applicant involved in reclamation of coal mining areas in arid regions to submit a sediment control plan for sediment control activities. Information collection is needed to determine whether these plans will achieve the reclamation and environmental protection pursuant to the Surface Mining Control and Reclamation Act and the Clean Water Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests. Data collection and reporting requirements associated with these activities are substantively covered by the "Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR part 780" ICR, OMB Control Number 1029–0036. Data collection and reporting requirements from today's rule that may not be included in the 30 CFR part 780 ICR are: some incremental baseline and annual monitoring and some sediment yield modeling.

The initial burden for coal mining and remining sites under the rule is estimated at 1,890 hours and $314,538 for baseline determination monitoring at coal remining sites. The initial burden associated with preparation of a site's pollution abatement plan or sediment control plan is already covered by an applicable SMCRA ICR. The annual burden for coal mining and remining sites under the rule is estimated at 3,024 hours per year and $189,302 per year for

annual monitoring at coal remining sites.

The initial burden for NPDES control authorities is estimated at 9,800 hours and $310,464 for review of SMCRA remining and reclamation plans (which include BMPs) and preparation of the NPDES permit. The annual burden for NPDES control authorities is estimated at 2,340 hours per year and $74,131 per year for review of annual monitoring data at coal remining sites.

For the Coal Remining Subcategory, the reporting burden is estimated to average 15.6 hours per respondent per year ((1,890 hours/3 years + 3,024 hours/year)/234 coal remining sites). This estimate includes time for collecting and submitting baseline and annual monitoring results. For the Western Alkaline Coal Mining Subcategory, there is projected to be no additional reporting burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

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 one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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 one year. Although the rule will impose some permit review and approval requirements on regulatory authorities, EPA has determined that this cost burden will be less than $80,000 annually. Accordingly, today's regulation is not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that this regulation contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, it is not subject to the requirements of Section 203 of the UMRA. The regulation does not establish requirements that apply to small governments.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

This final rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Although EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands, EPA projects that this regulation will generate a net cost savings for these mine sites. Thus, Executive Order 13175 does not apply to this rule.

Nevertheless, EPA consulted with representatives of tribal governments. EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands. With assistance from its American Indian Environmental Office, EPA has identified five Tribes as having lands in the western U.S. with, or having an interest in, coal mining activities. The Tribes are the Navajo Nation, the Hopi Tribe, the Crow Tribe, the Southern Ute Indian Tribe, and the Northern Cheyenne Tribe. EPA representatives met with Tribal officials from the Navajo Nation during coal mine site visits in New Mexico and Arizona in August 1998 to review environmental conditions and the applicability of the proposed regulation. In December 1999, EPA sent meeting invitations to Tribal Chairmen, Directors of Tribal Environmental Departments, and other representatives of the five Tribes with existing or potential interest in coal mining, and met with Tribal representatives from the Navajo Nation and Hopi Tribes in Albuquerque, NM on December 16, 1999 to consult on the proposed amendments to the existing effluent limitations guidelines, and to discuss plans for involvement at public meetings in western locations. As a result of this consultation, EPA agreed to an initial comment period on the proposal of 90 days. EPA later granted an extension to the comment period of 60 days. EPA provided a copy of the

relevant portions of the Rulemaking Record at the western location identified in the **ADDRESSES** section of this document to be available for Tribal representatives. During the comment period, EPA held public meetings in three locations that were convenient for attendance by Tribal representatives. No significant issues were raised by the Tribes. In response to the proposed rule, EPA received written comments from the Navajo EPA, which indicated general support for the Western Alkaline Coal Mining Subcategory.

G. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. The rule establishes effluent limitations imposing requirements that apply to coal mining facilities. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits). Thus, Executive Order 13132 does not apply to this rule. Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State governments throughout this regulatory development. State authorities raised numerous issues which are discussed in Section XII of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

H. National Technology Transfer and Advancement Act

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

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that today's rule requires dischargers to monitor for total suspended solids (TSS), settleable solids (SS), manganese, iron, and acidity. Facilities monitoring for these analytes need to use previously-approved technical standards already specified in the tables at 40 CFR 136.3.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither "economically significant" as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

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.

XI. Regulatory Implementation

Upon promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to affected facilities in the Western Alkaline Coal Mining Subcategory and Coal Remining Subcategory. This section discusses upset and bypass provisions, variances and modifications, and monitoring requirements.

A. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n), and 40 CFR 403.16 (upset) and 403.17 (bypass).

B. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to section 301 or the pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations guidelines or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the guidelines or standards applicable to the individual facility. Such a modification is known as a

"fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added section 301(n) explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of an FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative guidelines and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.*, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.*, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's NPDES permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. FDF variance requests with all supporting information and data must be received by the permitting authority within 180 days of publication of the final effluent limitations guideline. The specific regulations covering the requirements for and the administration of FDF variances are found at 40 CFR 122.21(m)(1), and 40 CFR 125 Subpart D. FDF variances are not available for new sources.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final NPDES permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modifications are described in 40 CFR 122.63.

C. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under section 402 of the Act.

The Agency has developed the limitations for this regulation to cover the discharge of pollutants for these industrial categories. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

All mining operations subject to today's regulation must also comply with SMCRA requirements. EPA has worked extensively with OSMRE in the preparation of this rule in order to ensure that today's requirements are consistent with OSMRE requirements. EPA believes that, in most cases, CWA requirements for a pollution abatement plan and sediment control plan will be satisfied by the requirements contained in an approved SMCRA permit.

EPA believes that compliance determinations under today's rule will encourage coordination and cooperation between SMCRA and NPDES authorities. EPA believes that, in some cases, the NPDES permit authority may not have the mining expertise or resources to adequately review pollution abatement plans, sediment control plans and associated modeling efforts and recognizes that the requirements for permit application provided under SMCRA, section 507, reclamation plans under SMCRA section 508, and inspections and monitoring provided under SMCRA section 517 are, in most cases, substantial and adequate. EPA envisions that approval by OSMRE or the delegated authority on the modeling effort and sediment control plan will often be sufficient review to satisfy the NPDES permitting authority. The coordination of regulatory agencies may require a memorandum of understanding to be developed between regulatory agencies or other

mechanisms in order to implement alternative sediment control standards efficiently.

D. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. Facilities use these methods to determine the presence and concentration of pollutants in wastewater, and EPA, State and local control authorities use them for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25.

The final rule requires facilities in the Coal Remining Subcategory to monitor for net acidity, TSS, SS, iron, and manganese. EPA has previously approved test methods for all these pollutants at 40 CFR 136.3.

XII. Summary of EPA Responses to Significant Comments on Proposal

The following section summarizes significant comments received on the proposed rule and the NODA, and a summary of EPA's response. Thirty-two stakeholders provided comments on the April 11, 2000 proposal addressing over 40 separate issues, and ten stakeholders provided comment on the NODA.

The complete comment summary and response document can be found in the public record for this final rule (DCN 3056). In selecting comments and responses for summary, the Agency selected those major and controversial issues that received considerable comment. Alternatively, comments and responses on other less controversial issues and issues where EPA essentially agrees with the commenters are not included below.

A. Coal Remining Subcategory

Comment: The implications of the language concerning bond release for remining operations could be debilitating if the language is interpreted to mean that any time passive treatment is incorporated into the pollution abatement plan, the operator will be perpetually liable for the operation and maintenance of the treatment facility. The ultimate result could be that the operator is never able to achieve complete bond release due to the existence of a passive treatment system.

Response: EPA understands the concern regarding perpetual liability for remining operations implementing passive treatment operations. EPA clarifies that for those remining operations that include passive treatment as an inherent portion of an approved Pollution Abatement Plan, the passive treatment operation should be considered a BMP and treated as part of implementing the Pollution Abatement Plan. See section V.A.4 of this document.

Comment: The requirements for baseline data collection for remining sites with pre-existing discharges should be no more stringent than baseline data collection requirements for permit applications that do not include remining. If existing water quality and seasonal variation requirements are more stringent, burdensome, and expensive for remining applicants, this will present another barrier for remining.

Response: There are no baseline data collection requirement for NPDES permit applications. However, EPA is aware that baseline data collection requirements for coal mining permits under SMCRA that do not include remining may be less stringent than those for remining permits. For mining permits that do not include remining operations, baseline information is typically collected from undisturbed areas and is used for a number of purposes. These purposes include: indicating overburden quality; predicting post-mining water quality; establishing background conditions for affected and unaffected groundwater (for permit decision making); providing background data for water supplies; and establishing circumstances for which a mining operation resulted in environmental improvement or degradation. The baseline data collected for these mining permits is not used to establish effluent limitations, and the collection of baseline data is not required for establishing effluent limitations.

Part 434 does not require baseline data collection for mines not involved in remining. The differing baseline sampling requirements reflect the different purpose and use of the baseline data in each circumstance. In the case of remining, baseline pollutant discharge samples are collected for the establishment of baseline conditions which are then used to establish site-specific effluent limitations for the pre-existing discharge. The effluent limitations based on this data collection are incorporated into the NPDES permit. Therefore, EPA believes that an adequate baseline sampling program must be used in order to accurately characterize baseline conditions that are used to establish effluent limitations. Therefore, EPA believes that the baseline data collection for Coal Remining Subcategory, while more stringent than that associated with non-remining permits, is necessary due to the site-specific nature of the Coal Remining Subcategory NPDES effluent limitations.

Comment: Where incentives are offered to encourage remining, those incentives should not include a lowering of environmental protection standards, but rather should focus on financial incentives that encourage remining without compromising the post-remining environmental quality of the area. Predictably, the resulting proposed rule is skewed towards assisting coal operators to cut costs in remining previously disturbed areas, while sacrificing the ability to achieve meaningful improvements in baseline conditions from previously mined areas.

Response: EPA agrees that coal operators should be provided financial incentives that encourage remining without compromising the post-remining environmental water quality. However, EPA does not agree that it has lowered environmental standards in order to achieve this goal. The issue with AML is that there is no responsible party for cleaning abandoned mine land, and discharges from abandoned mine lands continue to be a very serious problem affecting many areas of the Appalachian coal region. As noted in the proposal, there are over 1.1 million acres of abandoned coal mine lands in the United States which have produced over 9,709 miles of streams polluted by acid mine drainage.

Under SMCRA, a fund was established to pay for damage associated with abandoned mine lands. Expenditures from this fund are authorized through the regular congressional budgetary and appropriations process. Additionally, the funds are prioritized to fix problems that pose immediate health and safety risks, such as highwalls and open mine shafts. In 1999, $2.5 billion of the $3.6 billion of high priority coal related AML problems in OSMRE's AML inventory had yet to be funded and reclaimed. Due to the vast expense of reclaiming all AML, EPA believes that remining is a timely and cost-efficient means of reclaiming AML.

EPA does not agree that the remining regulations are sacrificing the ability to achieve meaningful environmental improvements. As noted in comments submitted by the Commonwealth of Pennsylvania, over 100 sites containing over 200 pollution discharges and 34,000 acres have been successfully reclaimed as a result of remining. This has been done at no expense to the taxpayer and has resulted in the reduction of discharge of acid loading by 15,918 pounds/day. A detailed

assessment of the water quality improvements and BMP implementation at these sites was provided in EPA's proposed rulemaking record and in Chapter 6 of EPA's *Coal Remining BMP Guidance Manual.*

Comment: The rule should include provision for BMP-based permit requirements in lieu of specific loading-based effluent limits for remining sites because remining is virtually certain to result in improvement.

Response: The goal of this rule is to improve water quality. EPA agrees that in most cases, remining operations will result in improved water quality. In fact, EPA's record on the rule contains data that overwhelmingly demonstrate improvement in water quality and environmental conditions resulting from remining operations. At these remining operations, most pre-existing discharges demonstrated a significant improvement in water quality. However, numerous pre-existing discharges demonstrated no change in water quality, and a small number demonstrated a decrease in water quality. At these sites, other non-water quality benefits may have been achieved. Therefore, EPA concluded that implementing BMPs is not a guarantee of success, and EPA concluded that numeric monitoring is necessary in most cases to ensure that a mine operator is not contributing additional quantities of pollutant loads to the nation's waterways. While EPA believes that there is a high likelihood of improvement in pre-existing discharges due to remining, EPA also acknowledges that improper or inadequate BMPs may increase pollutant loadings. EPA concluded that it is necessary for mine operators to adequately demonstrate that they are not increasing pollutant loadings over baseline, as required by the Rahall amendment.

EPA does not believe that monitoring poses an undue burden on the mine operator. EPA notes that monitoring costs are less than $3000 per year per discharge. If BMPs are appropriately incorporated into the plan and implemented accordingly, then the mine operator should be able to comply with the baseline numeric limits established in this regulation without incurring additional cost. Therefore, EPA has concluded that numeric limits, in addition to a pollution abatement plan, is the Best Available Technology for the Coal Remining Subcategory.

EPA has included a provision in the final rule for BMP-based effluent limitations where numeric limitations are infeasible. EPA believes this provision will allow improvement of AML that otherwise would continue to remain unreclaimed. EPA has determined that in certain specific cases, it is infeasible to calculate and monitor baseline pollutant levels in pre-existing discharges.

Comment: Under the current language in the law the States have some flexibility on how they would approach their respective remining programs. This enables a State program to develop rules and policies in concert with their State water quality authority that work for their specific region. A one-size-fits-all approach as contained in this rule does not necessarily work for all of the States' mining areas.

Response: In this final rule, EPA is balancing the need to provide guidance and clarification of the provisions of the Rahall Amendment with a recognition of the authority and flexibility given States to allow alternative requirements for remining permits. EPA is specifying the minimum requirements necessary for determining baseline. The permit authority then has the discretion to determine appropriate remining standards (which can be set at baseline or better) and site-specific BMPs. EPA is providing guidance on appropriate BMPs, but is not specifying the actual selection of BMPs. Thus, the final rule assumes that the coal remining expertise available from State and regional agencies will be used heavily in the review and approval of appropriate BMPs for each remining site's Pollution Abatement Plan.

Comment: A twelve-month sampling program to determine baseline pollution loads is a significant disincentive to remining due to the cost and time involved.

Response: The comment asserts that the monitoring requirements of a minimum of 12 monthly samples is too restrictive and will serve as disincentives to remining. EPA disagrees with this assertion. EPA has considered the findings by R.D. Zande & Associates and the Ohio Coal Development Office, which included responses to a questionnaire given to mine operators. While the responses did identify the number of samples as a disincentive to remining, responses also expressed concern over "the risk operators take that the information they are getting from the sampling will not give an accurate picture of how the remining will affect the effluent for the NPDES discharge," which is precisely the reason EPA has established the requirement for at least 12 representative baseline samples. Although EPA agrees there are likely to be some circumstances where the requirements for baseline sample collection may discourage remining, there are clearly other disincentives for remining that this rule will reduce. Namely, this regulation will establish formal EPA procedures for remining procedures based on standardized statistical procedures and the use of BMPs.

Moreover, EPA does not agree with the commenter's assertion that the requirement for 12 monthly baseline samples is a significant deterrent to obtaining a mining permit because this would cause an unreasonable delay in getting a permit. This has not been the experience of Ohio's neighbor, Pennsylvania, which has required 12 monthly samples since 1986. As explained in one of the documents supporting the proposed rule (*i.e.,* Coal Remining Statistical Support Document (EPA 821–R–00–011)), since 1985, PADEP has issued approximately 300 remining permits, with a 98 percent success rate. This document defines a successful remining site as one that has been mined without incurring treatment liability as the result of exceeding the baseline pollution load of the pre-existing discharges. The comment does not explain why the requirement for 12 monthly samples would act as disincentives in Ohio when Pennsylvania has demonstrated its success.

EPA further notes that planning, collecting data, completing the paperwork, and processing SMRCA mine permits is a time-consuming process of about a year during which the baseline samples can be collected. In particular, meeting the SMCRA requirements before preparing and submitting a permit application will require several months, during which a mine operator has the opportunity to begin baseline sampling. For example, the PA DEP requires at least three samples to have been collected prior to submission of a remining permit application. In theory, this can be accomplished within 60 days (by sampling on days 1, 30 and 60). EPA also believes, optimistically, that it will take at least 2 months for an operator to prepare a permit application due to the necessity of complying with SMCRA, and a minimum of 6 months for permit review and approval. Thus, if the permit were approved in an unusually short time, a mine operator would need to obtain an additional 2 or 3 monthly samples in order to accumulate 12 months of baseline data, and more likely, a 12-month sampling program could be completed before permit approval. Thus, because of the SMCRA requirements and Pennsylvania's success, EPA does not believe that requiring 12 monthly samples places an

undue burden on mine operators, and EPA believes it is more likely that a mine operator will be able to obtain 12 samples during the permitting process if the operator identifies and plans for baseline sampling early in the remining process.

In addition, EPA notes that the baseline sample collection requirements of this rule protect both the remining operator and the environment. If baseline characterization of pre-existing pollutant discharges is inadequate (for example, if it is based on too few samples), there is a chance that an operator could consistently face noncompliance by discharging pollutant loadings above an underestimated baseline that did not adequately incorporate natural variation in pollutant loading. In addition, there is the chance that environmental improvement could be jeopardized by allowing for pollutant loading discharges at high levels that still fall below an overestimated baseline.

Finally, as discussed in the Coal Remining Statistical Support Document (EPA–821–B–01–011), and in Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load (EPA–821–B–01–014), EPA believes that 12 monthly samples are the minimum to derive a statistically sound estimate of baseline.

Comment: EPA should consider expanding the rule to allow for alternative remining limits for other parameters, including suspended solids and settleable solids. The same rationale justifying alternative limits for acid mine drainage should apply to all existing water quality problems from abandoned mine lands. For instance, in Virginia, the State's 1998 303(d) list identifies fifteen streams in the coalfields impaired by resource extraction. Only two of those streams are identified as impaired by AMD and only one by active coal mining. The majority of the impaired streams have been impacted by discharges from abandoned underground mines or drainage from unreclaimed surface mines containing high levels of dissolved, settleable, and suspended solids. Coal companies will continue to be discouraged from assuming these significant drainage and discharge liabilities without some alternative effluent limitations.

Response: Based on the baseline conditions of sediment present at some AML, EPA believes that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. In accordance with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, and due to comments received on the NODA, EPA is establishing alternative limits for sediment in pre-existing discharges.

Comment: EPA does not have the authority to promulgate alternative standards for sediment because this is inconsistent with the Rahall amendment.

Response: The authority for today's rule is section 304(b) of the Clean Water Act, which requires the Agency to adopt and revise regulations providing guidelines for effluent limitations as appropriate. The Rahall Amendment, section 301(p) of the Act, provided specific authority for modified, less stringent effluent limitations for specified coal remining operations. Because the effluent limitations guidelines for the Coal Mining Point Source Category did not provide any different requirements for coal remining operations, the Rahall Amendment provided the only basis for issuing permits containing modified requirements to remining operations. In promulgating today's regulations adopting effluent limitation guidelines for the coal remining subcategory, EPA is adopting requirements that are consistent with, but not necessarily identical to, the provisions of the Rahall Amendment. The applicability of these effluent limitation guidelines to remining operations in AML abandoned after the enactment of SMCRA is within EPA's discretion under section 304(b).

B. Western Alkaline Coal Mining Subcategory

Comment: EPA documents related to the rule assume that the proposed Western Alkaline Coal Mining Subcategory would have no "significant impacts on relative coal production in the West versus the East" but fail to detail the basis for this assumption.

Response: EPA further examined the potential impact of the proposed guidelines on the competitiveness of coal production in the East relative to coal production in the West. This analysis supported EPA's conclusions that the rule would have no significant impact on competitiveness. The revised estimated cost savings comprise an average of about $0.033 saved per ton of coal produced in western alkaline surface mines or about 0.4 percent of the value of coal production. This relatively small percentage decrease in delivered price, combined with the effect of transportation costs, suggest that the impact of the savings on the relative competitiveness of eastern and western coal should be very small. A detailed analysis of this issue is presented in the economic analysis, included in the rulemaking record.

Comment: The commenter believes that if modeling can demonstrate compliance it does not matter where the runoff originates. The commenter supports the expansion of the Western Alkaline Coal Mining Subcategory to include drainage from active mining areas.

Response: The Agency has considered the use of alternative sediment controls for non-process areas in addition to reclamation areas. EPA determined that alternative sediment controls were appropriate for reclamation areas for several reasons. These reasons included that sediment is a natural component of runoff in arid watersheds, that sediment is typically the only parameter of concern in runoff from western alkaline reclamation areas, that BMPs are proven to be effective at controlling sediment, and that computer modeling procedures are able to accurately predict sediment runoff conditions. Due to comments received in support of expanding the area of alternative sediment controls, EPA evaluated additional non-process areas under the same set of circumstances. Based on this rationale, in addition to comments and data received on the proposal, EPA determined that similar circumstances exist for runoff from some non-process mine areas including brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. In each of these areas, sediment is typically the only parameter of concern, BMPs can be implemented to maintain sediment levels below baseline, and modeling procedures are appropriate. Therefore, EPA has expanded the Western Alkaline Coal Mining Subcategory to include these areas in addition to the mining reclamation area. However, EPA decided not to include spoil piles in the Western Alkaline Coal Mining Subcategory due to the lack of applicable BMPs, the lack of adequate modeling procedures for an unconsolidated land area, and the potential for contamination of the runoff. See section V.B.3 for further explanation.

Comment: If indeed there are serious negative impacts to retaining sedimentation ponds after active mining has ceased, then EPA has chosen the wrong solution. The obvious remedy is to enforce the existing regulations, not change them to accommodate these negative impacts that violate Federal and State mining laws.

Response: EPA notes that it has received comments from other stakeholders which have both agreed and disagreed with EPA's assertion that

sedimentation ponds may be causing negative environmental impacts. EPA believes that sedimentation ponds, when constructed to meet numeric discharge standards, may cause negative environmental impacts in certain circumstances. EPA listed the potential impacts in the proposal which include loss of water due to evaporation, additional land disturbance, accelerated erosion, and upset of the natural hydrologic balance. While in many cases sedimentation ponds are not causing negative impacts, EPA also believes that there are instances where sedimentation ponds are causing upsets to the natural hydrologic balance. As discussed in the preamble, EPA believes that the most environmentally responsible goal is to maintain sediment loads at pre-disturbed conditions.

The negative impacts caused by the exclusive use of sedimentation ponds cannot necessarily be remedied by enforcing existing regulations. For example, water loss from a sedimentation pond cannot reasonably be controlled. Additionally, land must be disturbed during the construction, maintenance, and removal of the sedimentation ponds. Although this land must eventually be reclaimed in order to meet existing regulations, EPA estimates that 600 acres per year will not be disturbed due to implementation of the sediment control plan required by the Western Alkaline Coal Mining Subcategory.

OSMRE regulations require that mine operators "minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation * * *" (SMCRA section 515(b)(10)). While existing EPA regulations at 40 CFR part 434, subpart E Post-Mining Areas require that wastewater discharges from reclamation areas contain less than 0.5 ml/L settleable solids, EPA has concluded that background sediment concentrations in the arid and semiarid west are significantly higher than the 0.5 ml/L standard. EPA has recognized this discrepancy by adopting the Western Alkaline Subcategory.

Comment: In Colorado, all of the coal mines rely extensively on approved and permitted sedimentation ponds to ensure compliance with applicable discharge standards, to control sediment and to protect downstream water quality. Colorado's topography and hydrologic regime generally dictate the need for sedimentation ponds to achieve this compliance and protection. The proposed alternative standards and practices may also be applicable in some cases and such options should be allowed. However, we recommend that the rules clearly include a "grandfather clause" which states that mines can continue to utilize, now and in the future, sedimentation ponds with numeric standard methods.

Response: EPA notes that in many cases, sedimentation ponds may be necessary to meet water quality standards or to protect receiving streams and has concluded that the use of sedimentation ponds should be determined on a site by site basis in accordance with computer modeling, NPDES permit authorities and SMCRA permit authorities. EPA does not believe that a "grandfather clause" is necessary to address the commenter's concerns. EPA has clearly stated in the proposed and final preamble that sedimentation ponds are considered a BMP which may be necessary in certain circumstances to protect water quality. EPA also believes that numeric limitations may be necessary in certain circumstances to protect water quality, and recognizes that the NPDES authority can impose numeric effluent limits on point source discharges from reclamation areas where necessary to meet water quality standards.

Comment: A commenter would like further clarification regarding the use of the term "natural" in reference to sediment loading, background levels and undisturbed conditions. In New Mexico most land cannot be considered "natural" since it has been disturbed some way. There is nothing that could be considered "natural".

Response: EPA agrees with the commenter that "natural" conditions are not the same as "background" conditions because much of the applicable land has been disturbed in some way by activities such as grazing or development. EPA erroneously used these two terms interchangeably in the proposal. EPA has revised its language in the final preamble and rule to correct this error by using the term "pre-mined, undisturbed" to indicate the level of sediment present prior to disturbance by surface coal mining.

Comment: The successful enforcement of both SMCRA and Clean Water Act requirements on the coal industry is, at best, a tenuous situation. EPA proposes to eliminate numeric effluent limitations in the western alkaline coal mining subcategory and instead place its trust in control plans based on computer modeling. This rather subjective standard would be difficult to enforce.

Response: As documented by comments submitted by the Office of Surface Mining, State and Tribal regulatory authorities, and mine operators, EPA does not agree that enforcement of both SMCRA and CWA requirements will be difficult. In fact, EPA believes that the new subcategory requirements will be much easier to enforce than numeric limits. As described in the proposal, implementation of a sediment control plan based on computer modeling will allow inspectors to determine compliance at any time, regardless of whether or not precipitation has occurred. Additionally, EPA does not agree that computer modeling produces a "subjective" standard. The RUSLE and SEDCAD models are well documented models based on many years of experience. As documented by comments submitted, these models are commonly used by regulatory authorities to determine sediment loadings.

Comment: The requirements for the proposed western alkaline coal mining subcategory have the potential to duplicate many permitting, inspection, and enforcement provisions of SMCRA.

Response; EPA does not intend for the new subcategory requirements to result in a duplication of work. Rather, EPA believes that compliance determinations under today's rule will encourage coordination and cooperation between SMCRA and NPDES authorities. EPA believes that, in many cases, the NPDES permit authority may not have the expertise or resources to adequately review mining related sediment control plans and associated modeling efforts. EPA recognizes that the requirements for permit application provided under SMCRA section 507, reclamation plans provided under SMCRA section 508, and inspections and monitoring provided under SMCRA section 517 are, in most cases, substantial and adequate. EPA envisions that approval by OSMRE or the delegated authority on the modeling effort and sediment control plan will often be sufficient to satisfy the NPDES permitting authority. As stated in Section XI.2.C of this document, this may require a Memorandum of Understanding to be developed to further the cooperation between regulatory agencies.

Comment: Some experience with sediment ponds in the arid and semiarid West is that downstream erosion caused by "clear water discharge," while theoretically possible, is not generally a problem because storm runoff at most western mines is stored and rarely discharges from these ponds. Water is mostly lost to

evaporation and seepage. Also, in northwest Colorado, coal mine operators may also discharge into streams that, by contrast, are shrub lined, stable and not subject to additional erosion or scouring. Thus, sedimentation ponds produce environmental benefits and are generally used by coal mine operators in the Uinta Basin to meet applicable discharge requirements.

Response: EPA thanks the commenter for clarification that "clear water discharge" may not typically be a problem. Comment on this issue has been varied. Some commenters have supported the claim that sedimentation ponds disturb downstream hydrologic balances and the "clear water" discharge from such ponds can cause erosion to receiving streams. Other commenters have noted that they have not found this to be the case.

EPA agrees that sedimentation ponds do not necessarily result in adverse environmental impacts. EPA believes that ponds may be necessary in certain circumstances to ensure that sediment levels are maintained below pre-mine levels. EPA notes that ponds are one of a suite of BMPs that a mine may install in order to meet reclamation standards. However, ponds may not be necessary in all circumstances and the use of other BMPs such as check dams, vegetation, silt fences, and other construction practices may be equally protective of the environment. One advantage of using BMPs in lieu of, or in addition to, ponds is that less land is disturbed for pond construction and removal.

EPA also acknowledges there are differences in background conditions among sites in the West. For this reason, EPA has established a regulatory structure for the Western Alkaline Coal Mining Subcategory that allows mine sites to design site-specific sediment control plans that demonstrate that the discharge of sediment will not be greater than pre-mined, undisturbed conditions. Therefore, the sediment control plan and discharge limitations for a mine in northwest Colorado will likely be different from a mine site in New Mexico.

Comment: Models are constantly in a state of upgrade, thus model predictions written into an operator's permit application package can become outdated. New models may be released that better predict sediment yield for reclaimed areas than one used for the original reclamation and hydrologic analysis. The commenter recommends that EPA stipulate in the final regulation flexibility with regard to models that OSMRE validates for developing sediment yield standards.

Response: EPA proposed and finalized the following language regarding acceptable computer models: "The operator must use the same watershed model that was or will be used to acquire the SMCRA permit ." EPA intends this to mean that a mine can use the upgraded version of a computer model that was used in the original application. For example, if the mine used SEDCAD 4.0 in their application, then the mine operator could use SEDCAD 5.0 in subsequent modeling procedures. This does not mean that the operator could switch to an entirely new model that was not approved in the original mine permit. EPA believes that this language provides the necessary flexibility that the commenter desires to use the most recent and appropriate modeling procedure.

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Document

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
Alkaline mine drainage—mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l.
AMD—Acid mine drainage, which means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or greater than 10 mg/l.
AML—Abandoned mine land
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act
BCT—Best conventional pollutant control technology under section 304(b)(4)(B) of the Clean Water Act
BMP—Best management practice
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act
Brushing and grubbing area—The area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
CFR—Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments (33 U.S.C. 1251 *et seq.*)
Conventional pollutants—Constituents of wastewater as determined by Section 304(a)(4) of the Clean Water Act, including pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
CWA—Clean Water Act
EPA—U.S. Environmental Protection Agency
FTE—Full-time employees
ICR—Information Collection Request
NAICS—North American Industry Classification System
NPDES—National Pollutant Discharge Elimination System
NSPS—New source performance standards under Section 306 of the Clean Water Act
OMB—Office of Management and Budget
OSMRE —Office of Surface Mining, Reclamation and Enforcement
Pollution abatement area—The part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.
POTW—Publicly-owned treatment works
PPA—Pollution Prevention Act of 1990
Pre-existing discharge—Any discharge resulting from mining activities that have been abandoned prior to the time of the remining permit application.
Pre-mined, undisturbed—The conditions present at the time of a mining permit application.
PSNS—Pretreatment standards for new sources
Reclamation area—the surface area of a coal mine that has been returned to required contour and on which revegetation (specifically, seeding or planting) work has been commenced.
Regraded area—The surface area of a coal mine which has been returned to required contour.
Remining—Coal remining refers to a coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.
RFA—Regulatory Flexibility Act
RUSLE—Revised Universal Soil Loss Equation
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act
Sediment—All undissolved organic and inorganic material transported or deposited by water.
Sediment Yield—The sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.
SIC—Standard Industrial Classifications
SMCRA—Surface Mining Control and Reclamation Act
SS—Settleable Solids
Topsoil stockpiling area—The area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
Toxic Pollutants—The pollutants designated by EPA as toxic in 40 CFR 401.15.
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
WTP—Willingness to pay

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 434

Environmental protection, Mines, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 27, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 9 and 434 are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new heading with entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Coal Mining Point Source Category	
434.72–434.75	2040–0239
434.82–434.83	2040–0239
434.85	2040–0239
Appendix B	2040–0239
* * * * *	

PART 434—[AMENDED]

2. The authority citation for part 434 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361.

3. Revise § 434.50 to read as follows:

§ 434.50 Applicability.

The provisions of this subpart are applicable to discharges from post-mining areas, except as provided in subpart H—Western Alkaline Coal Mining of this part.

4. Revise § 434.60 to read as follows:

§ 434.60 Applicability.

The provisions of this subpart F apply to this part 434 as specified in subparts B, C, D, E and G of this part.

5. Add subpart G, consisting of §§ 434.70 through 434.75, to read as follows:

Subpart G—Coal Remining

Sec.

Subpart G—Coal Remining

§ 434.70 Specialized definitions.

(a) The term *coal remining operation* means a coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

(b) The term *pollution abatement area* means the part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

(c) The term *pre-existing discharge* means any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application. This term shall include a pre-existing discharge that is relocated as a result of the implementation of best management practices (BMPs) contained in the Pollution Abatement Plan.

(d) The term *steep slope* means any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State. This term does not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered and through which the mining operation is to proceed, leaving a plain or predominantly flat area.

(e) The term *new source remining operation* means a remining operation at a coal mine where mining first commences after February 22, 2002 and subsequently becomes an abandoned mine.

§ 434.71 Applicability.

(a) This subpart applies to pre-existing discharges that are located within or are hydrologically connected to pollution abatement areas of a coal remining operation.

(b) A pre-existing discharge that is intercepted by active mining or that is commingled with waste streams from active mining areas for treatment is subject to the provisions of § 434.61 Commingling of waste streams. For the purposes of this subpart, § 434.61 requires compliance with applicable BPT, BAT, BCT, and NSPS effluent limitations in subparts C, D, and F of this part. Section 434.61 applies to the commingled waste stream only during the time when the pre-existing discharge is intercepted by active mining or is commingled with active mine wastewater for treatment or discharge. After commingling has ceased, the pre-existing discharge is subject to the provisions of this part.

(c) In situations where coal remining operations seek reissuance of an existing remining permit with BPJ limitations and the regulatory authority determines that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures contained in Appendix B of this part, pre-existing discharge limitations at existing remining operations shall remain subject to baseline pollutant levels established during the original permit application.

(d) The effluent limitations in this subpart apply to pre-existing discharges until the appropriate SMCRA authority has authorized bond release.

§ 434.72 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) The operator must submit a site-specific Pollution Abatement Plan to the permitting authority for the pollution abatement area. The plan must be approved by the permitting authority and incorporated into the permit as an effluent limitation. The Pollution Abatement Plan must identify characteristics of the pollution abatement area and the pre-existing discharges. The Pollution Abatement Plan must be designed to reduce the pollution load from pre-existing discharges and must identify the

selected best management practices (BMPs) to be used. The plan must describe the design specifications, construction specifications, maintenance schedules, criteria for monitoring and inspection, and expected performance of the BMPs. The BMPs must be implemented as specified in the plan.

(b) (1) Except as provided in 40 CFR 125.30 through 125.32 and paragraph (b)(2) of this section, the following effluent limits apply to pre-existing discharges:

EFFLUENT LIMITATIONS

Pollutant	Requirement
(i) Iron, total	May not exceed baseline loadings (as defined by Appendix B of this part).
(ii) Manganese, total	May not exceed baseline loadings (as defined by Appendix B of this part).
(iii) Acidity, net	May not exceed baseline loadings (as defined by Appendix B of this part).
(iv) TSS	During remining and reclamation, may not exceed baseline loadings (as defined by Appendix B of this part). Prior to bond release, the pre-existing discharge must meet the applicable standards for TSS or SS contained in Subpart E.[1]

[1] A pre-existing discharge is exempt from meeting standards in Subpart E of this part for TSS and SS when the permitting authority determines that Subpart E standards are infeasible or impractical based on the site-specific conditions of soil, climate, topography, steep slopes, or other baseline conditions provided that the operator demonstrates that significant reductions of TSS and SS will be achieved through the incorporation of sediment control BMPs into the Pollution Abatement Plan as required by paragraph (a) of this section.

(2) If the permitting authority determines that it is infeasible to collect samples for establishing the baseline pollutant levels pursuant to paragraph (b)(1) of this section, and that remining will result in significant improvement that would not otherwise occur, then the numeric effluent limitations in paragraph (b)(1) of this section do not apply. Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to, discharges that exist as a diffuse groundwater flow that cannot be assessed via sample collection; a base flow to a receiving stream that cannot be monitored separate from the receiving stream; a discharge on a steep or hazardous slope that is inaccessible for sample collection; or, a number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

§ 434.73 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32 and 434.72(b)(2), a pre-existing discharge must comply with the effluent limitations listed in § 434.72(b) for net acidity, iron and manganese. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a) .

§ 434.74 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32 and 434.72(b)(2), a pre-existing discharge must comply with the effluent limitations listed in § 434.72(b) for total suspended solids. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a).

§ 434.75 New source performance standards (NSPS).

Except as provided in § 434.72(b)(2), a pre-existing discharge from a new source remining operation must comply with the effluent limitations listed in § 434.72(b) for iron, manganese, acidity and total suspended solids. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a).

6. Add subpart H, consisting of §§ 434.80 through 434.85, to read as follows:

Subpart H—Western Alkaline Coal Mining

Sec.
- 434.80 Specialized definitions.
- 434.81 Applicability.
- 434.82 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
- 434.83 Effluent limitations attainable by application of the best available technology economically achievable (BAT).
- 434.84 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]
- 434.85 New source performance standards (NSPS).

Subpart H—Western Alkaline Coal Mining

§ 434.80 Specialized definitions.

(a) The term *brushing and grubbing area* means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.

(b) The term *regraded area* means the surface area of a coal mine that has been returned to required contour.

(c) The term *sediment* means undissolved organic and inorganic material transported or deposited by water.

(d) The term *sediment yield* means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.

(e) The term *topsoil stockpiling area* means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.

(f) The term *western coal mining operation* means a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less.

§ 434.81 Applicability.

(a) This subpart applies to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas.

(b) This subpart applies to drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements:

(1) pH is equal to or greater than 6.0;

(2) Dissolved iron concentration is less than 10 mg/L; and

(3) Net alkalinity is greater than zero.

(c) The effluent limitations in this subpart apply until the appropriate SMCRA authority has authorized bond release.

§ 434.82 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, the following effluent limitations apply to mine drainage from applicable areas of western coal mining operations:

(a) The operator must submit a site-specific Sediment Control Plan to the permitting authority that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. The Sediment Control Plan must be approved by the permitting authority and be incorporated into the permit as an effluent limitation. The Sediment Control Plan must identify best management practices (BMPs) and also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices.

(b) Using watershed models, the operator must demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit.

(c) The operator must design, implement, and maintain BMPs in the manner specified in the Sediment Control Plan.

§ 434.83 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing western coal mining operation with drainage subject to this subpart must meet the effluent limitations in § 434.82.

§ 434.84 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]

§ 434.85 New source performance standards (NSPS).

Any new source western coal mining operation with drainage subject to this subpart must meet the effluent limitations in § 434.82.

6. Part 434 is amended by adding appendix B to part 434 as follows:

Appendix B to Part 434—Baseline Determination and Compliance Monitoring for Pre-existing Discharges at Remining Operations

I. General Procedure Requirements

a. This appendix presents the procedures to be used for establishing effluent limitations for pre-existing discharges at coal remining operations, in accordance with the requirements set forth in Subpart G; Coal Remining. The requirements specify that pollutant loadings of total iron, total manganese, total suspended solids, and net acidity in pre-existing discharges shall not exceed baseline pollutant loadings. The procedures described in this appendix shall be used for determining site-specific, baseline pollutant loadings, and for determining whether discharge loadings during coal remining operations have exceeded the baseline loading. Both a monthly (single-observation) procedure and an annual procedure shall be applied, as described below.

b. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

c. Calculations described in this appendix must be applied to pollutant loadings. Each loading value is calculated as the product of a flow measurement and pollutant concentration taken on the same date at the same discharge sampling point, using standard units of flow and concentration (to be determined by the permitting authority). For example, flow may be measured in cubic feet per second, concentration in milligrams per liter, and the pollutant loading could be calculated in pounds per year.

d. Accommodating Data Below the Maximum Daily Limit at subpart C of this part. In the event that a pollutant concentration in the data used to determine baseline is lower than the daily maximum limitation established in subpart C of this part for active mine wastewater, the statistical procedures should not establish a baseline more stringent than the BPT and BAT effluent standards established in subpart C of this part. Therefore, if the total iron concentration in a baseline sample is below 7.0 mg/L, or the total manganese concentration is below 4.0 mg/L, the baseline sample concentration may be replaced with 7.0 mg/L and 4.0 mg/L, respectively, for the purposes of some of the statistical calculations in this Appendix B. The substituted values should be used for all methods in this Appendix B with the exception of the calculation of the interquartile range (R) in Method 1 for the annual trigger (Step 3), and in Method 2 for the single observation trigger (Step 3). The interquartile range (R) is the difference between the quartiles M_{-1} and M_1; these values should be calculated using actual loadings (based on measured concentrations) when they are used to calculate R. This should be done in order to account for the full range of variability in the data.

II. Procedure for Calculating and Applying a Single-Observation (Monthly) Trigger

Two alternative methods are provided for calculating a single-observation trigger. One method must be selected and applied by the permitting authority for any given remining permit.

A. Method 1 for Calculating a Single Observation Trigger (L)

(1) Count the number of baseline observations taken for the pollutant of interest. Label this number n. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(2) Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be $x_{(1)}$, the next lowest be $x_{(2)}$, and so forth until the highest number (maximum) is $x_{(n)}$.

(3) If fewer than 17 baseline observations were obtained, then the single observation trigger (L) will equal the maximum of the baseline observations ($x_{(n)}$).

(4) If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations:

Instructions for calculation of a median of n observations:

If n is odd, then M equals $x_{(n/2 + 1/2)}$.

For example, if there are 17 observations, then $M = X_{(17/2+1/2)} = x_{(9)}$, the 9th highest observation.

If n is even, then M equals $0.5 * (x_{(n/2)} + x_{(n/2 + 1)})$.

For example, if there are 18 observations, then M equals 0.5 multiplied by the sum of the 9th and 10th highest observations.

(a) Next, calculate M_1 as the median of the subset of observations that range from the calculated M to the maximum $x_{(n)}$; that is, calculate the median of all x larger than or equal to M.

(b) Next, calculate M_2 as the median of the subset of observations that range from the calculated M_1 to $x_{(n)}$; that is, calculate the median of all x larger than or equal to M_1.

(c) Next, calculate M_3 as the median of the subset of observations that range from the calculated M_2 to $x_{(n)}$; that is, calculate the median of all x larger than or equal to M_2.

(d) Finally, calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated M_3 to $x_{(n)}$.

Note: When subsetting the data for each of steps 3a–3d, the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

(5) Method for applying the single observation trigger (L) to determine when the baseline level has been exceeded

If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for four weeks (four weekly samples).

(a) If three or fewer of the weekly observations exceed L, resume monthly monitoring

(b) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

B. Method 2 for Calculating a Single Observation Trigger (L)

(1) Follow Method 1 above to obtain M_1 (the third quartile, that is, the 75th percentile).

(2) Calculate M_{-1} as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate interquartile range, $R = (M_1 - M_{-1})$.

(4) Calculate the single observation trigger L as

$L = M_1 + 3 * R$

(5) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for four weeks (four weekly samples).

(a) If three or fewer of the weekly observations exceed L, resume monthly monitoring

(b) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

III. Procedure for Calculating and Applying an Annual Trigger

A. Method 1 for Calculating and Applying an Annual Trigger (T)

(1) Calculate M and M_1 of the baseline loading data as described above under Method 1 for the single observation trigger.

(2) Calculate M_{-1} as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate the interquartile range, $R = (M_1 - M_{-1})$.

(4) The annual trigger for baseline (Tb) is calculated as:

$$Tb = M + \frac{(1.815 * R)}{\sqrt{n}}$$

where n is the number of baseline loading observations.

(5) To compare baseline loading data to observations from the annual monitoring period, repeat steps 1–3 for the set of monitoring observations. Label the results of the calculations M′ and R′. Let m be the number of monitoring observations.

(6) The subtle trigger (Tm) of the monitoring data is calculated as:

$$Tm = M' - \frac{(1.815 * R')}{\sqrt{m}}$$

(7) If Tm > Tb, the median loading of the monitoring observations has exceeded the baseline loading.

B. Method 2 for Calculating and Applying an Annual Trigger (T)

Method 2 applies the Wilcoxon-Mann-Whitney test to determine whether the median loading of the monitoring observations has exceeded the baseline median. No baseline value T is calculated.

(1) Steps for Conducting the Wilcoxon-Mann-Whitney Test

(a) Let n be the number of baseline loading observations taken, and let m be the number of monitoring loading observations taken. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(b) Order the combined baseline and monitoring observations from smallest to largest.

(c) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2, and so forth, up to the highest observation, which will have rank n + m.

(1) If two or more observations are tied (have the same value), then the average rank for those observations should be used. For example, suppose the following four values are being ranked:

3, 4, 6, 4

Since 3 is the lowest of the four numbers, it would be assigned a rank of 1. The highest of the four numbers is 6, and would be assigned a rank of 4. The other two numbers are both 4. Rather than assign one a rank of 2 and the other a rank of 3, the average of 2 and 3 (*i.e.*, 2.5) is given to both numbers.

(d) Sum all the assigned ranks of the n baseline observations, and let this sum be S_n.

(e) Obtain the critical value (C) from Table 1. When 12 monthly data are available for both baseline and monitoring (*i.e.*, n = 12 and m = 12), the critical value C is 99.

(f) Compare C to S_n. If S_n is less than C, then the monitoring loadings have exceeded the baseline loadings.

(2) Example Calculations for the Wilcoxon-Mann-Whitney Test

BASELINE DATA											
8.0	9.0	9.0	10.0	12.0	15.0	17.0	18.0	21.0	23.0	28.0	30.0
MONITORING DATA											
9.0	10.0	11.0	12.0	13.0	14.0	16.0	18.0	20.0	24.0	29.0	31.0
BASELINE RANKS											
1.0	3.0	3.0	5.5	8.5	12.0	14.0	15.5	18.0	19.0	21.0	23.0
MONITORING RANKS											
3.0	5.5	7.0	8.5	10.0	11.0	13.0	15.5	17.0	20.0	22.0	24.0

Sum of Ranks for Baseline is Sn = 143.5, critical value is $C_{n,m}$ = 99.

(3) Critical Values for the Wilcoxon-Mann-Whitney Test

(a) When n and m are less than 21, use Table 1.

In order to find the appropriate critical value, match column with correct n (number of baseline observations) to row with correct m (number of monitoring observations)*.

TABLE 1.—CRITICAL VALUES (C) OF THE WILCOXON-MANN-WHITNEY TEST
(for a one-sided test at the 0.001 significance level)

n / m	10	11	12	13	14	15	16	17	18	19	20
10	66	79	93	109	125	142	160	179	199	220	243
11	68	82	96	112	128	145	164	183	204	225	248
12	70	84	99	115	131	149	168	188	209	231	253
13	73	87	102	118	135	153	172	192	214	236	259
14	75	89	104	121	138	157	176	197	218	241	265
15	77	91	107	124	142	161	180	201	223	246	270
16	79	94	110	127	145	164	185	206	228	251	276
17	81	96	113	130	149	168	189	211	233	257	281
18	83	99	116	134	152	172	193	215	238	262	287
19	85	101	119	137	156	176	197	220	243	268	293
20	88	104	121	140	160	180	202	224	248	273	299

(b) When n or m is greater than 20 and there are few ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let N = n + m.

$$\text{CriticalValue} = 0.5 * n * (N+1) - 3.0902 * \sqrt{n * m\,(N+1)/12}$$

For example, this calculation provides a result of 295.76 for n = m = 20, and a result of 96.476 for n = m = 12. Rounding up produces approximate critical values of 296 and 97.

(c) When n or m is greater than 20 and there are many ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let S be the sum of the squares of the ranks or average ranks of all N observations. Let N = n + m.

$$\text{CriticalValue} = 0.5 * n * (N+1) - 3.0902 * \sqrt{V}$$

In the preceding formula, calculate V using

$$V = \frac{n * m * S}{N * (N-1)} - \frac{n * m * (N+1)^2}{4 * (N-1)}$$

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January 23, 2002

Part IV

Federal Emergency Management Agency

44 CFR Part 206
Disaster Assistance; Federal Assistance to Individuals and Households; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD25

Disaster Assistance; Federal Assistance to Individuals and Households

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 206 of the Disaster Mitigation Act of 2000 by consolidating "Temporary Housing Assistance" and "Individual and Family Grant Programs" into a single program called "Federal Assistance to Individuals and Households". Through this consolidation we are attempting to streamline the administration of the provision of assistance to disaster victims.

DATES: We (FEMA) invite your comments on this proposed rule, which we should receive by March 11, 2002.

ADDRESSES: Please send any comments on this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Lumumba Yancey, Readiness, Response and Recovery Directorate, (202) 646–3939, or (email) at *lumumba.yancey@fema.gov*.

SUPPLEMENTARY INFORMATION: By virtue of its enactment of section 206(a) of the Disaster Mitigation Act of 2000, Pub.L. 106–390, Congress effectively combined into one section of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, or the Act) what previously had been two separate provisions. The first is the old version of section 408 of the Stafford Act, 42 U.S.C. 5174, entitled "Temporary Housing Assistance". The second is section 411 of the Stafford Act, 42 U.S.C. 5178, entitled "Individual and Family Grant Programs". Under section 206(d) of Pub.L. 106–390, this consolidation of sections 408 and 411 of the Stafford Act will not become effective until 18 months after enactment of Pub.L. 106–390. The President signed Pub.L. 106–390 on October 30, 2000; the new consolidated authority becomes effective on May 1, 2002. Once made final this proposed rule will guide FEMA's implementation of the new statutory provision.

The intent of section 206 of Pub.L. 106–390 is to consolidate and streamline the provision of assistance under sections 408 and 411 of the Stafford Act. For example, House Report No. 106–40 (the report that accompanied H.R. 707, which became Pub.L. 106–390) indicates that H.R. 707 "attempts to increase the efficiency of existing disaster assistance programs by eliminating unnecessary and complicated aspects of the program. This includes * * * combining the housing and individual and family assistance programs." *See* p. 11 of House Report No. 106–40.

Because of the clear Congressional interest in streamlining the provision of assistance under the new version of section 408 of the Act, 42 U.S.C. 5174, we propose to administer a consolidated program under section 408. Under the new version of 42 U.S.C. 5174 there would be a single registration period for assistance (see § 206.103 of the proposed rule), a consolidated statement of eligibility and ineligibility conditions for assistance (§ 206.104 of the proposed rule), a consolidated definition of the criteria for assistance (§ 206.105 of the proposed rule), a consolidated appeal process (§ 206.106 of the proposed rule), a consolidated process for recovery of funds (§ 206.107 of the proposed rule), and a consolidated process for possible State administration of certain types of assistance that are authorized by amended section 408 (§ 206.111 of the proposed rule).

We anticipate that generally FEMA will administer all assistance under amended 42 U.S.C. 5174. However, under § 206.111 of the proposed rule the States will have the discretion to administer certain types of assistance previously known as the Individual and Family Grant Programs (see § 206.111(a) of the proposed rule). In addition, we anticipate that some States may ask to participate in the management of a portion of the direct housing program. The decision to allow States to do so is within FEMA's discretion, which we will apply by a Memorandum of Understanding (MOU). States that wish to administer these programs would work with FEMA to develop an annual MOU to govern their activities under 42 U.S.C. 5174 as a precondition of active involvement in such activities. The MOUs would reflect the streamlined approach to the activities authorized by 42 U.S.C. 5174 and would describe different optional procedures for States to use in the administration of the program.

Under § 206.111(a) of the proposed rule, States would be given the option to administer certain types of assistance under the new authority entitled "Assistance to Address Other Needs." See revised 42 U.S.C. 5174(e). We drafted the proposed regulation to give States this discretion in light of the language of 42 U.S.C. 5174(f), which authorizes States to "request a grant from (FEMA) to provide financial assistance to individuals and households in the State under paragraph (e)* * *." We anticipate that most States that opt to administer this program will use FEMA's processing system in performing their activities, but we also plan to offer States the opportunity to administer the program more independently. At the same time we are sensitive to the clear expression of congressional intent to consolidate and streamline assistance under the provision. We invite comment from the public on the tension between the need to consolidate and streamline the activities which are authorized by the new version of 42 U.S.C. 5174, on the one hand, and the need to ensure the availability of an active State role in the process, on the other hand.

In addition, the proposed rule contemplates that in some situations States may opt to participate in the management of "direct" disaster housing assistance programs under 42 U.S.C. 5174(c)(1)(B). See § 206.111(b) of the proposed rule. Our existing rule at 44 CFR 206.101(s) contemplates the possibility of States managing any portion of a temporary housing program. On the other hand, § 206.111(b) of the proposed rule only contemplates the possibility of a State managing the "direct housing" authority under 42 U.S.C. 5174(c)(1)(B). We decided to draft the regulation in a more limited manner than the current regulation because of the clear congressional desire for a more consolidated and streamlined program under 42 U.S.C. 5174. At the same time we propose to continue the policy of enabling States that desire to do so to become active participants in the process of providing temporary direct housing assistance to their residents in the aftermath of major disasters.

The current version of 42 U.S.C. 5174 does not contain an explicit reference to the possibility of a State administering the temporary housing authority of the Act. Nevertheless, FEMA published 44 CFR 206.101(s) several years ago in spite of the lack of explicit authority for States to administer any portion of the temporary housing authorities of the Stafford Act. Because no one has questioned this rule in the many years that it has been in place, we believe that there is implicit authority to retain a rule that calls for possible State

management of the temporary direct housing authority of the Stafford Act. We solicit input from the public on this aspect of the proposed rule.

42 U.S.C. 5174(b) is the general authority for the President to provide housing assistance to disaster victims, which the President delegated to the Director of FEMA under Executive Order 12148. This new paragraph explicitly indicates that FEMA has authority to determine the most appropriate form of housing assistance to provide to disaster victims. This is a new provision in the Stafford Act that in the past we addressed in our implementing regulations. In addition, 42 U.S.C. 5174(b) states explicitly for the first time that we can provide more than one form of housing assistance to disaster victims "based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation." *See* 42 U.S.C. 5174(b)(2)(B).

Section 408(a)(3) of the previous version of the Stafford Act stated that "Federal financial and operational assistance under this section shall continue for not longer than 18 months...." The general rule under this provision is that *all* forms of temporary housing assistance are available for up to 18 months, unless FEMA extends the period in the public interest. On the other hand, under the amended version of 42 U.S.C. 5174(c)(1)(B)(ii) the only type of temporary housing assistance that is specifically limited to 18 months is "direct" housing assistance (e.g., mobile homes and travel trailers). However, there is no indication in the Disaster Mitigation Act of 2000 that Congress intended for other forms of temporary housing assistance to be available generally for more than 18 months. In addition, in most cases if we were to provide rental assistance under the new version of 42 U.S.C. 5174(c)(1) for more than 18 months, the total assistance would exceed the $25,000 cap that is imposed by amended 42 U.S.C. 5174(h). Therefore, we have included a provision in the proposed rule that would limit temporary housing assistance generally (rather than only in the case of the provision of "direct" housing assistance) to no more than 18 months (see § 206.101(d) of the proposed rule). We would appreciate comments from the public on this aspect of the proposed rule.

The new version of 42 U.S.C. 5174(c) identifies the types of housing assistance that FEMA can provide in the aftermath of presidentially-declared major disasters. The types of authorized housing assistance are:

(1) Financial assistance to rent alternate housing (see the amended version of 42 U.S.C. 5174(c)(1)(A), as well as § 206.108(b)(1)(i) of the proposed rule);

(2) "Direct" housing assistance in the form of temporary housing units (e.g., mobile homes and travel trailers) that FEMA purchases or leases for disaster victims, usually in situations where rental accommodations are not available (see the amended version of 42 U.S.C. 5174(c)(1)(B), as well as § 206.108(b)(1)(ii) of the proposed rule);

(3) Financial assistance (up to $5,000 per household) for the repair of owner-occupied private residences, utilities, and residential infrastructure that are damaged in major disasters (which can be provided without demonstrating that a disaster victim's housing needs can be met by other means, other than by insurance reimbursement) (see the amended version of 42 U.S.C. 5174(c)(2), as well as § 206.108(b)(2) of the proposed rule);

(4) Financial assistance (up to $10,000 per household) for the replacement of owner-occupied private residences that are damaged by major disasters (see the amended version of 42 U.S.C. 5174(c)(3), as well as § 206.108(b)(3) of the proposed rule); and

(5) Financial assistance or direct assistance to disaster victims to construct permanent housing in insular areas (i.e., the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and in Puerto Rico and other remote locations when no alternate housing resources are available and when the other forms of authorized temporary housing assistance are "unavailable, infeasible, or not cost-effective" (see the amended version of 42 U.S.C. 5174(c)(4), as well as § 206.108(b)(4) of the proposed rule).

There are several significant differences between this new version of the Stafford Act's housing authority and the previous version. The previous version of 42 U.S.C. 5174 was entitled "Temporary Housing Assistance", and it authorized exclusively temporary assistance to address the housing needs of disaster victims. The new version of 42 U.S.C. 5174, on the other hand, contains two housing authorities that have more permanent than temporary features. There is now an authorization for replacement housing to be provided to disaster victims (see the amended version of 42 U.S.C. 5174(c)(3), which we discuss below), and there is an authority for permanent housing construction at the new version of 42 U.S.C. 5174(c)(4), which we also discuss below. These new provisions of the Act suggest congressional recognition that in some unique circumstances we should implement the traditionally temporary housing authorities of the Stafford Act so as to provide a longer term solution to the housing needs of disaster victims.

Another change to the Act relates to 42 U.S.C. 5174(b) of the earlier version of the Act. That provision, which is not in the new version of the temporary housing authority, authorized the payment of mortgage or rental assistance to disaster victims who, as a result of financial hardship caused by a major disaster, were unable to continue paying their pre-disaster rent or mortgages. Because this form of housing assistance is no longer in the Act, for major disasters declared on or after May 1, 2002, this type of housing assistance will not be available under the Stafford Act.

Another change in the new housing authority relates to the authority to provide financial assistance to repair owner-occupied residences in the aftermath of major disasters. The previous version of this authority did not contain a cap on the amount of such assistance. Our practice has been to impose such caps administratively. The new version of the temporary housing authority (see the revised version of 42 U.S.C. 5174(c)(2)) contains a $5,000 cap on this type of assistance (to be adjusted annually to reflect changes in the Consumer Price Index). *See* § 206.108(b)(2) of the proposed rule. The $5,000 cap would cover not only repairs to owner-occupied private residences, but also hazard mitigation measures. The legislative history relating to this new provision suggests that there is some confusion whether the amended language imposes an absolute cap on the amount of authorized repair assistance. Although we believe that the enacted provision creates an absolute $5,000 cap on this type of assistance, we are concerned that that cap might imprudently tie our hands in our administration of this provision of the revised legislation. Therefore, we ask for public comments on the housing repair authority generally, and on the $5,000 cap in particular.

Congress also authorized two new forms of housing assistance in the new version of 42 U.S.C. 5174. The first appears at 42 U.S.C. 5174(c)(3). This provision authorizes for the first time in the history of the Federal disaster assistance program funding to replace owner-occupied private residences that are damaged in major disasters. The provision of the proposed regulation that would implement this new authority appears at § 206.108(b)(3) of the proposed rule. The proposed rule

states that before we can provide this type of replacement assistance, an authorized member of the affected household must agree to purchase flood insurance on the replacement housing unit under any applicable flood insurance purchase mandates that are created by the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994. The proposed rule indicates that this new replacement housing authority would only apply where an owner-occupied private residence could be replaced "in its entirety" for $10,000 or less (adjusted annually to reflect changes in the Consumer Price Index). FEMA does not expect that it will be feasible to use this authority often.

The second new form of housing assistance in the new version of 42 U.S.C. 5174 authorizes the construction of permanent housing in insular areas and other remote areas where it would not be feasible or cost-effective to rely on other types of temporary housing assistance. On several occasions in the past we have provided permanent housing assistance in remote insular areas of Puerto Rico and various Pacific islands because there were no rental resources available, repairs to pre-disaster residences were not feasible, and it would not have been cost-effective to purchase and ship mobile homes or other readily-fabricated dwellings to the disaster sites. The enactment of this new provision reflects an understanding that in rare, limited circumstances permanent housing assistance may be the only viable way to provide housing in the aftermath of major disasters. We would implement this new authority under § 206.108(b)(4) of the proposed regulation. The new authority could be implemented in insular areas, i.e., the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and in Puerto Rico and other areas that are eligible to receive disaster assistance under the Stafford Act, but which are so remote as to make other forms of housing assistance extremely difficult and costly to provide.

The regulations that implement the current version of 42 U.S.C. 5174 explicitly refer to the provision of "transient accommodations" assistance. See 44 CFR 206.101(g)(1)(ii). That provision of the existing regulations authorizes FEMA to provide short-term housing assistance for up to 30 days to help disaster victims meet their immediate post-disaster housing needs. The proposed rule that we publish today does not explicitly refer to "transient accommodations", but we propose to provide this type of financial assistance as an implicit subset of the financial assistance that we will continue to provide under the revised version of 42 U.S.C. 5174(c)(1)(A) of the Stafford Act and under § 206.108(b)(1)(i) of the proposed rule.

The new version of 42 U.S.C. 5174(d) imposes certain terms and conditions on the provision of direct housing assistance to disaster victims. The general rule is that we will place direct housing assistance on a site provided by the State, local government, owner of the site, or by the disaster victim. We can, however, provide a site when we determine that a site that we provide would be more economical or accessible than one provided by the State, local government, site owner, or the disaster victim. The previous version of 42 U.S.C. 5174(a)(4) dictated that the costs of site construction and development would be cost shared between FEMA and the State or local government, but the new version of 42 U.S.C. 5174 does not retain this cost sharing provision. Therefore, we may fund the entire costs of site construction and development in the future" but only where we determine that it is necessary for the Federal government to assume this obligation.

New 42 U.S.C. 5174(d)(2) describes the process for disposal of temporary housing units that are purchased for the use of disaster victims. We may sell such housing units directly to disaster victims who occupy the units if they lack other permanent housing. As described in the proposed rule at § 206.109(a)(1)(ii), the sales price will be at fair market value, except that FEMA may adjust the sales price for purchasers who are not able to pay such an amount for the purchase of a temporary housing unit. As provided under new 42 U.S.C. 5174(d)(2)(A)(iii), as well as § 206.109(a)(1)(iii) of the proposed rule, we would deposit the proceeds of such sales into the Disaster Relief Fund, which we administer to implement the Stafford Act.

Paragraphs (A)(iv) and (B)(ii)(II) of revised 42 U.S.C. 5174(d)(2) relate to the obligation to purchase insurance on disaster housing units. The insurance purchase mandates relate to "hazard insurance" and "flood insurance" (flood insurance is not typically provided in standard homeowners insurance policies). Initially we want to point out that we interpret the mandate to purchase "hazard insurance" to equate to a mandate to obtain standard homeowners insurance policies on disaster housing units that are purchased following major disaster responses. We do not intend to require the purchase of insurance for every conceivable hazard that might exist in a given locale under these two paragraphs in 42 U.S.C. 5174(d)(2).

We also want to ask those who review this proposed rule to note the different statutory provisions relating to the purchase of flood insurance on housing units that FEMA sells under 42 U.S.C. 5174(d)(2). 42 U.S.C. 5174(d)(2)(A)(iv) and (d)(2)(B)(ii)(II) mandate that as a condition of the sale of a housing unit to disaster victims or to States, to other governmental entities, or to voluntary organizations, respectively, the purchaser must agree to purchase and maintain flood insurance on the housing unit. That mandate does not apply to "any other person" who purchases a housing unit under the terms of 42 U.S.C. 5174(d)(2)(B). There is no indication in the legislation or the legislative history why Congress may have intended to require disaster victims, State or local governments, or voluntary organizations to purchase flood insurance on housing units that FEMA sells in the aftermath of major disasters, but not to require other purchasers of housing units to buy flood insurance. In addition, it is noteworthy that the revised version of 42 U.S.C. 5174(c)(3)(C) (relating to replacement housing grants, as opposed to the sale of housing units that FEMA purchases) only requires the purchase of flood insurance on replacement housing when such housing is in a designated special flood hazard area.

There is no legislative history clarifying the distinction between the different flood insurance purchase mandates in amended 42 U.S.C. 5174. We believe that although there are different provisions relating to flood insurance purchase mandates within 42 U.S.C. 5174, it is important that we should apply the flood insurance purchase mandates arising out of the Act consistently. Therefore, we interpret the various flood insurance purchase mandates of 42 U.S.C. 5174 to apply only when a housing unit is to be placed in a designated special flood hazard area. This interpretation is consistent with the generic flood insurance purchase mandate that arises out of the Flood Disaster Protection Act of 1973, Public Law 93–234. However, in light of the differences between the different flood insurance purchase provisions within this new statutory provision, we invite comments from the public on our interpretation of this issue.

We also want to direct the public's attention to another significant aspect of amended 42 U.S.C. 5174 as it relates to the administration of this authority vis-á-vis the flood insurance purchase mandates of other legislation. Section

102 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a, and section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, respectively, impose stringent flood insurance purchase mandates generically and on disaster victims in particular. It is also noteworthy that 42 U.S.C. 5174(c)(3)(C) of the amended Act (relating to "replacement housing") explicitly provides that there is no authority to waive "any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of * * * " replacement housing assistance.

The regulations that implement the current IFG program authorize victims of flood disasters who qualify for IFG assistance to receive flood insurance coverage under a Group Flood Insurance Policy (GFIP). Under the GFIP, IFG assistance is used to purchase a three-year flood insurance policy under the National Flood Insurance Program, which FEMA administers pursuant to the National Flood Insurance Act of 1968, as amended. *See* 44 CFR 206.131(d)(2). No similar provision is included in the proposed rule that accompanies this discussion because we propose to eliminate the GFIP and restore the responsibility for the flood insurance purchase requirement back to the individual or household receiving the federal assistance. Under the current GFIP process, IFG funds are used to purchase three years of flood insurance for disaster victims who are eligible for IFG assistance. If the GFIP process is eliminated, as we are proposing, then victims of flooding disasters will be responsible for obtaining and maintaining flood insurance at their own expense. If they fail to do so, then in the aftermath of future flooding they will not be eligible to receive assistance under subsection 408(e) of the Act. We recognize that while we have the discretion to require disaster victims to purchase flood insurance using their own resources, as we are proposing to do, there are other ways to address this issue. We could keep in place the current GFIP process, pursuant to which disaster victims are provided flood insurance coverage for three years at subsidized rates without having to provide their own resources to pay for such coverage. We could also implement a modified version of the GFIP process, pursuant to which disaster victims would be provided flood insurance for three years at subsidized rates that they would have to pay for using their own resources. Or we could do away with the GFIP process but still provide victims with flood insurance coverage that would be paid out of assistance for which the disaster victims qualify under section 408 of the Act. *See* § 206.101(k)(3)(i) of the proposed rule. We invite comments from the public on this aspect of the proposed rule.

The amended version of 42 U.S.C. 5174(e), entitled "Financial Assistance to Address Other Needs", is similar to the program that is currently authorized at section 411, "Individual and Family Grant Programs", 42 U.S.C. 5178. Beginning on May 1, 2002, 42 U.S.C. 5174(e) will authorize FEMA, in consultation with the Governor of a State in which the President has declared a major disaster, to provide financial assistance to meet disaster-related medical, dental, and funeral expenses. The section will also authorize FEMA to address personal property, transportation, and other necessary expenses or serious needs resulting from major disasters.

In addition, new 42 U.S.C. 5174(f) addresses the role that States may play in the implementation of the program entitled "Financial Assistance to Address Other Needs". Sections 206.110 and 206.111 of the proposed regulation describe how we will implement these provisions of 42 U.S.C. 5174. Under § 206.111 of the proposed regulation States will have the option (1) to let FEMA administer the financial assistance that 42 U.S.C. 5174(e) authorizes, (2) to work with FEMA to administer the program, or (3) to run the program independently, consistent with the Stafford Act and FEMA's implementing regulations and policies.

The amended version of 42 U.S.C. 5174(f)(2) is a new provision. It relates to the mandates of the Privacy Act, 5 U.S.C. 552a. The new provision states that FEMA should "provide for the substantial and ongoing involvement of the States * * * including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance* * * Section 206.101(j) of the proposed rule would implement this new statutory provision by authorizing FEMA to share applicant information with States in order to facilitate the provision of additional State and local assistance to disaster victims. We would be interested in hearing from members of the public their reaction to this provision of the proposed rule, especially as it relates to the mandates of the Privacy Act.

As mandated in the revised version of 42 U.S.C. 5174(g), the costs of providing "financial assistance to address other needs" will be cost shared on a 75 percent Federal/25 percent State basis, as was the case before the recent amendments to the Stafford Act. In addition, the amended version of 42 U.S.C. 5174(h) indicates that no individual or household can receive more than $25,000 (adjusted annually under changes in the Consumer Price Index) with respect to a single major disaster declaration.

Finally, section 206(b) of the Disaster Mitigation Act of 2000 amends section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), to make assistance under the revised version of 42 U.S.C. 5174 available in the aftermath of presidentially-declared emergencies, as well as major disasters. The draft rule that accompanies this discussion refers throughout to declarations of major disaster. However, because of the amendment at section 206(b) there is now authorization to make assistance available under 42 U.S.C. 5174 in both emergencies and major disasters.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, because of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If an action will have a significant effect, then the agency uses the EA to develop an EIS.

Agencies can categorically identify actions that do not normally have a significant impact on the environment. FEMA's existing regulations implementing NEPA exempt from NEPA review the preparation of regulations relating to actions that qualify for categorical exclusions. See 44 CFR 10.8(d)(2)(ii). In addition, FEMA's regulations also categorically exclude temporary housing and Individual and Family Grant assistance from NEPA review. See 44 CFR 10.8(d)(2)(xix)(D) and (F). Therefore, we have determined that FEMA's rules implementing NEPA exempt this rule from the preparation of an EA or an EIS. The changes reflected in this proposed rule are exempt from NEPA because they reflect administrative changes to the program that would have no effect on the environment. However, we would perform an environmental review under 44 CFR part 10 on any proposed project

that we would fund and implement under the authorities covered by this rule.

Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), we have submitted the proposed rule with a copy of the PRA OMB clearance package to the Office of Management and Budget (OMB) for review. Under the PRA, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

FEMA has already obtained OMB approval for the information collection request under OMB Control Number 3067–0009, Disaster Assistance Registration/Application for Disaster Assistance. The information from the form is used to implement the current versions of sections 408 and 411 of the Stafford Act. Although the OMB approval for this information collection request expires July 28, 2003, FEMA is taking steps to reduce the information collection burden relating to this form. Our effort to reduce the burden is independent of the recent amendment to section 408 of the Stafford Act, to the recent repeal of section 411 of the Stafford Act, and the information collection requirements contained in this proposed rule.

Collection of Information

Title: Request for Approval of Late Application.

Abstract: After the registration period ends, FEMA will accept late registrations for an additional 60 days. FEMA will process late registrations for those applicants who provide justification for the delay in their registration. In order for FEMA to effectively review the late application request, we ask that the request be in writing and explain the reason(s) for the delay in registering.

Respondents: Applicant.

Title: Request for Continued Assistance (Housing and Medical).

Abstract: After the initial assistance, FEMA may provide continued Housing and Medical reimbursement, based on need. In order for FEMA to effectively evaluate the continuing need for housing and/or medical assistance, we ask that the request be in writing and that the applicant provide information about their permanent housing plans or receipts (bills) for medical expenses.

Respondents: Applicant.

Title: Appeal of Program Decision.

Abstract: Under the provisions of section 423 of the Stafford Act, applicants for assistance from FEMA may appeal any eligibility determination. In order for FEMA to effectively respond to an applicants appeal, we ask that the appeal be in writing and explain the reason(s) for the appeal.

Respondents: Applicant.

Title: Review of Memorandum of Understanding (MOU) and Guidance Supplemental.

Abstract: The Governor may request the authority to participate in administration or management of the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively coordinate program activities, we require the State to sign an agreement, which establishes a partnership between FEMA and the State for the delivery of disaster assistance. The agreement is used to identify the State's proposed level of support and participation during disaster recovery.

Respondents: State.

Title: Development of Management Plans for Direct Housing (to include Financial Agreement).

Abstract: The Governor may request authority to participate in the management of the Temporary Housing-Direct Assistance Program under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

Respondents: State.

Title: Development of State Management Plans for Financial Assistance to Address Other Needs (to include Financial Agreement).

Abstract: The Governor may request a grant from FEMA to provide financial assistance to individuals and households in the State under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

Respondents: State.

Estimated Total Annual Burden:

Information collection request	Number of respondents	Frequency of response	Time per response	Annual burden hours	Annual costs to respondents
Applicants:					
Request for Approval of Late Application	8000	1	45 minutes	6000	36000
Request for Continued Assistance (Housing and Medical)	2000	1	30 minutes	1000	6000
Appeal of Program Decision (to include review and use of supplemental guidance)	30000	1	45 minutes	22500	135000
States:					
Review Memorandum of Understanding (MOU) and Guidance Supplemental	56	1	3 hours	168	2676
Development of Management Plans for Direct Housing (to include for Financial Agreements)	56	1	2 hours	112	1784
Development of State Administrative Plans for Financial Assistance to Address Other Needs (to include Financial Agreement)	56	1	3 hours	168	2676
Total	40168			29948	184136

Comments

We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall 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. Your comments should be submitted to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503 by [insert date 60 days from the date of publication of this notice in the **Federal Register**].

For Further Information Contact: For copies of the information collection requirements in this proposed rule, contact Muriel B. Anderson, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472 using one of the following: telephone number (202) 646–2625; facsimile number (202) 646–2247; or e-mail address: *muriel.anderson@fema.gov*.

Regulatory Planning and Review

Under section 408 of the Stafford Act, as it would be implemented by this proposed rule, FEMA could provide different types of housing assistance to individuals and families whose pre-disaster housing became uninhabitable as a result of a catastrophe that the President declared to be an emergency or a major disaster under the Stafford Act. We described earlier the different forms that housing assistance could take, depending upon the needs of the disaster victim, the location of the disaster victim's residence, the extent of the damage to the victim's residence, the cost to the government of providing different forms of housing assistance, and the availability of alternate interim housing accommodations in the vicinity of the disaster victim's residence. We also described the types of other serious needs that FEMA is authorized to address pursuant to 42 U.S.C. 5174. Based upon its enactment of section 206 of the Disaster Mitigation Act of 2000, as well as the earlier versions of these authorities, Congress has determined that the Federal government should provide certain forms of disaster assistance to individuals and families who are adversely affected by those catastrophes which the President determines to be of sufficient severity and magnitude to require governmental assistance to recover from the effects of such catastrophes. This proposed regulation would merely describe the process by which FEMA would implement this program.

Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires agencies that promulgate regulations under the Administrative Procedure Act to prepare and make available for public comment an initial regulatory flexibility analysis. Agencies are required in these analyses to describe the impact of regulatory activities on "small entities", as that term is defined at 5 U.S.C. 601. The term includes "small business concerns" (under section 3 of the Small Business Act), "small organizations" (which is defined as independently owned and operated non-profit entities that are not dominant in their fields), and "small governmental jurisdictions" (which means governments of cities, counties, towns, townships, villages, school districts, or special districts that have populations of less than 50,000). *See* 5 U.S.C. 601. Because disaster assistance under 42 U.S.C. 5174 is provided to individuals and families, rather than to "small entities", this proposed rule would not have a significant economic impact on small entities. It is obvious that the provision of housing and other forms of assistance to disaster victims in communities with populations under 50,000 would benefit the disaster victims. It is also clear that such assistance would indirectly benefit any "small" communities in which disaster victims live because it would relieve those governments from having to provide disaster relief without assistance from FEMA. Therefore, any impact on small governments that might result from FEMA's implementation of 42 U.S.C. 5174 would be beneficial to those entities. Nevertheless, because this proposed rule would not have a direct impact on small entities, we have determined that there is no need for FEMA to prepare an initial regulatory impact analysis relating to this proposed rule under the Regulatory Flexibility Act. We invite comments from the public on this determination.

In addition, pursuant to Executive Order 12866 we examined whether this proposed rule would be a "significant regulatory action", as that term is defined at section 3(f) of the Executive Order. E.O. 12866 requires agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects. A regulatory impact analysis must be prepared for major rules with economically significant effects ($100,000,000 in any one year). In the course of our development of this proposed rule vis-á-vis the analysis that is contemplated by E.O. 12866, we reviewed FEMA's costs of implementing the temporary housing authority that is codified at the existing version of 42 U.S.C. 5174 (relating only to the provision of temporary housing assistance) and at the existing version of 42 U.S.C. 5178 Act (relating to the Individual and Family Grant, or IFG, Program) for the past three fiscal years. Pursuant to section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), temporary housing assistance can be provided in response to either Presidentially-declared emergencies or major disasters. However, Individual and Family Grant assistance can only be provided in response to major disaster declarations. In accordance with the revisions to 42 U.S.C. 5174 that will become effective in May of 2002, the entire range of assistance under the new version of 42 U.S.C. 5174 will be available in the aftermath of both emergencies and major disasters.

Our review of FEMA's costs over the past three fiscal years reveals that in approximately 16 percent of the Presidentially-declared major disasters FEMA did not provide either temporary housing or Individual and Family Grant assistance. This is because the housing and IFG authorities within the Stafford Act are not triggered in every Presidential emergency and major disaster declaration—in particular situations there may only be a need to provide disaster assistance to governmental entities. However, in the majority of the major disasters that the Presidents have declared during the past three fiscal years we did provide housing and IFG assistance. In those major disasters where we provided housing and IFG assistance, there was a broad range of costs associated with the aid. In one major disaster the amount of temporary housing expenditures was only about $7,700, while in two other major disasters we provided temporary housing assistance which in each situation resulted in the expenditure of approximately $150,000,000. The range of expenditures for the IFG program was also substantial. In two major disasters FEMA did not distribute any IFG assistance, while in one major disaster during fiscal year 2001 we distributed in excess of $182,000,000 in IFG assistance. In any event, in each of fiscal years 1999, 2000, and 2001, FEMA paid out in excess of $100,000,000 as temporary housing and IFG assistance.

Section 3(f) of E.O. 12866 defines "significant regulatory action" as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy * * * (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 (4) Raise novel legal or policy issues.* * *" This proposed

rule does not meet the criteria under paragraphs 2, 3, or 4 of this provision of the Executive Order. In addition, we have determined that this rule is not likely to adversely affect the economy (under paragraph 1 of this provision). It is clear based upon the statistics cited in the preceding paragraph that FEMA will in all likelihood pay out in excess of $100,000,000 in most fiscal years under 42 U.S.C. 5174 after it becomes effective. Therefore, one could determine that this proposed rule is "significant" pursuant to the definition at section 3(f)(1) of E.O. 12866. For this reason we have prepared the economic impact analysis which follows.

However, we believe it is also noteworthy that this proposed rule does not relate to a new or discretionary program of a regulatory nature. The new version of 42 U.S.C. 5174 reflects a Congressional desire for a consolidated and streamlined approach to the pre-existing authorities of sections 408 and 411 of the Stafford Act, 42 U.S.C. 5174 and 5178, respectively. It is apparent from a review of the statistics cited above that there is already a baseline expenditure by FEMA of amounts which vary from year-to-year depending on each year's disaster activity, but which exceed $100,000,000 per year. Because the consolidated authority at 42 U.S.C. 5174 has not created a new program, but is merely a refinement of two pre-existing authorities, we do not expect that FEMA will pay out annually in excess of $100,000,000 more than we currently provide in the course of our implementation of the existing temporary housing and IFG authorities.

We have determined that disaster assistance which will be distributed under 42 U.S.C. 5174 will have a positive impact on disaster victims and their families, on the economies of local and tribal governments which have been affected by emergencies and major disasters, on the economies of States in which catastrophes occur, and generally on the health and safety of communities which are struck by catastrophes. Although FEMA has not performed studies to quantify the positive impacts that have historically inured to the benefit of disaster victims and their communities as a result of the provision of temporary housing and IFG benefits, it is obvious that such forms of assistance have a positive impact. Helping disaster victims obtain temporary housing has significant favorable economic consequences—both directly for disaster victims and their families, and indirectly by funneling money back into local, tribal, and State economies which have been adversely affected by emergencies and major disasters. The provision of financial assistance to eligible disaster victims enables them to address their short-term needs, both by obtaining housing and by purchasing goods and services that are essential to meeting their disaster-related needs that are not met by insurance or other sources. At the same time, the expenditure by disaster victims of financial assistance provides much-needed boosts to the local, tribal, and State economies, both in the form of expenditures relating to housing needs (*e.g.*, rentals of available housing and construction activities) and relating to other necessary needs (*e.g.*, funeral, medical and dental expenses). It is also obvious that the provision of housing assistance and assistance to address other unmet needs provides an indirect benefit to local governments because it relieves those governments of the burden of providing assistance to their residents and of the associated expenses of caring for families that might otherwise require sheltering and other forms of assistance. However, as stated above, this rule would, for the most part, consolidate and streamline existing authorities, and this rule cannot claim benefits from the existing programs. Thus FEMA expects that the primary benefits of this rule will be a reduction in the cost to the State governments of administering these programs and to the public in obtaining this assistance. FEMA has not analyzed these possible costs savings and requests additional information from the public.

Assessment of Regulation on Families

The provision of assistance under 42 U.S.C. 5174 pursuant to the proposed rule would also have a positive impact on families under section 654 of the Treasury and General Government Appropriations Act of 1999. That provision requires agencies to assess the impact of proposed agency actions on family well-being, the stability and safety of families, and the performance of family functions. It is clear that FEMA's implementation of the program which is authorized by 42 U.S.C. 5174 will have a beneficial impact on family well-being in the aftermath of emergencies and major disasters. In the absence of such a program there would be a greater possibility that family stability might be at risk as a result of the stresses that inevitably come from the displacement of families from their homes and communities following catastrophes that damage their homes or make them inaccessible. The provision of housing assistance relieves families of financial and emotional stress, enables families to resume a normal lifestyle, and helps maintain the cohesion of families that have been struck by catastrophes. Therefore, we have determined that this proposed rule is consistent with section 654 of the Treasury and General Government Appropriations Act of 1999 and that FEMA's implementation of the rule would help to stabilize family circumstances following Presidentially-declared emergencies and major disasters.

Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands

Under Executive Order 11988 federal agencies are required to "provide leadership to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains * * *" *See* section 1 of E.O. 11988. Under Executive Order 11990 federal agencies are required to "provide leadership and * * *take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities * * *" *See* section 1 of E.O. 11990. The requirements of these Executive Orders apply in the context of the provision of federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting federal programs affecting land use.

Most of the activities that FEMA will carry out pursuant to section 408 of the Stafford Act and these regulations will not involve either providing federal financial assistance relating to construction and property improvements or conducting federal programs that will affect land use. We anticipate that much of the housing assistance we will provide in the context of major disasters which are declared by the President after May 1, 2002, will be in the form of funds to rent alternative accommodations while victims' pre-disaster residences are being repaired. *See* subsection 408(c)(1)(A)(i). A substantial portion of the housing assistance we will provide when this rule becomes effective will be in the form of funding to repair residences which have been damaged by major disasters. *See* subsection 408(c)(2). These types of construction activities are not the type, which typically trigger the application of the Executive Orders. Finally, the majority of the needs that will be addressed under subsection 408(e) of the Stafford Act relate to replacement of personal property and to medical, dental, and

funeral expenses. These forms of financial assistance do not trigger the Executive Orders either. *See* 44 CFR 9.5(c)(8)–(11), which describe FEMA's interpretation of this issue under the pre-existing versions of sections 408 and 411 of the Stafford Act.

Nevertheless, there are certain activities that are authorized by the revised version of section 408 of the Act and this rule that may trigger the requirements of the Executive Orders. For example, the use of federal funds to construct housing pursuant to subsections 408(c)(3) and (4) could trigger the process described in the Executive Orders and FEMA's implementing regulation, which appears at 44 CFR part 9. In addition, if federal funds were used pursuant to subsection 408(d)(1) to construct group sites for the placement of mobile homes or readily fabricated dwellings for the use of disaster victims, FEMA would follow the process described in the Executive Orders and our implementing regulation.

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, on the relationship between the national government and 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 proposed rule under Executive Order 13132 and have determined that the rule does not have "substantial direct effects on the States" and therefore does not have the type of federalism implications contemplated by the Executive Order. While the draft rule contemplates the possible optional involvement of States in the implementation of portions of the activities authorized by amended section 408 of the Stafford Act, it is also clear that the revised statutory provision anticipates that FEMA will have a leadership role in overseeing the implementation of the overall program. We can foresee no way that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

In addition, we have consulted with State and local representatives in the development of the proposed rule. Our consultations included discussions with various State Emergency Management Directors at meetings in: (1) St. Louis, Missouri, in January 2001; (2) at a conference of the National Emergency Management Association (NEMA) in Arlington, Virginia, in February 2001; and (3) at a NEMA Response and Recovery Subcommittee meeting in April 2001. We also held discussions with the local emergency management directors at a meeting with the International Association of Emergency Managers in Emmitsburg, Maryland on April 3, 2001. Further, we held a meeting for the national associations and organizations that represent State and local officials in Washington, DC on April 26, 2001, in order to describe and discuss the issues and programs involved in this proposed rule. Also in attendance at the briefing were Governors' Washington, DC representatives. In summary, based on our extensive consultations with representatives of a number of States, and based on our determination that the proposed rule will not have "substantial direct effects on the States", we believe that the publication of this proposed rule is consistent with the terms of Executive Order 13132. We invite comment from State and local officials on this important issue.

Executive Order 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, we incorporate environmental justice into our 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 because of their race, color, or national origin. No action that we can anticipate under the proposed rule will have a disproportionately high and adverse human health effect on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply to this proposed rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal government or we consult with those governments. If FEMA complies by consulting, Executive Order 13175 requires us to provide to the Office of Management and Budget a description of the extent of our prior consultations with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires us to provide to the Director of OMB a tribal summary impact statement describing the extent of our prior consultation with tribal officials, the nature of their concerns, and our position supporting the need to issue the regulation, and a statement of the extent to which we have met the concerns of tribal officials.

The Disaster Mitigation Act of 2000 requires this proposed rule. We have not consulted with Indian tribal officials, grounded on our belief that this proposed rule will not significantly and uniquely affect the communities of Indian tribal governments. Nor will the rule impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 13175 do not apply in the context of this proposed rule.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR part 206 as follows:

1. The authority citation of Part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121—5206; Reorganization Plan No. 3 of 1978, 43 FR 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR. 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise Subpart D as follows and remove Subpart E.

Subpart D—Federal Assistance to Individuals and Households

Subpart D—Federal Assistance to Individuals and Households

§ 206.101 Federal Assistance to Individuals and Households.

(a) *Purpose.* This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than $25,000 under this subpart with respect to a single major disaster. FEMA will adjust the $25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary Housing and Repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart will begin on the date of the incident that results in a presidential declaration that a major disaster exists, except that reasonable expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Associate Director (AD) may extend this period if he/she determines that due to extraordinary circumstances an extension would be in the public interest.

(f) *Assistance not counted as income.* Assistance under this subpart is not to be counted as income or a resource in the determination of eligibility for welfare, income assistance or income-tested benefit programs that the Federal Government funds.

(g) *Exemption from garnishment.* All assistance provided under this subpart is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release or waiver. Recipients of rights under this provision may not reassign or transfer the rights.

(h) *Duplication of benefits.* In accordance with the requirements of section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:

(1) Payment of the applicable benefits are significantly delayed;

(2) Applicable benefits are exhausted;

(3) Applicable benefits are insufficient to cover the housing need; or

(4) Housing is not available on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (h)(2) of this section, the Federal share of eligible costs paid under this subpart shall be 100 percent.

(2) Federal and State cost shares for assistance under § 206.110 will be as follows;

(i) The Federal share will be 75 percent; and

(ii) The State will pay the 25 percent non-Federal share from funds that the State makes available.

(j) *Application of the Privacy Act.* (1) All provisions of the Privacy Act of 1974, 5 U.S.C. 552a, apply to this subpart. FEMA may not disclose an applicant's record except in response to:

(i) A release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and who authorizes the release;

(ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (i)(2) of this section.

(2) Under section 408(f)(2) of the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.

(i) States receiving applicant information under this paragraph must protect such information in the same manner that the Privacy Act requires FEMA to protect it.

(ii) States receiving such applicant information must not disclose the information further to other entities, nor must they use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) *Flood Disaster Protection Act requirement.* (1) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended (42 U.S.C. section 4106), imposes certain restrictions on federal financial assistance for acquisition and construction purposes. For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means a grant to an individual or household to buy, receive, build, repair or improve insurable portions of a home and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR part 61, Insurance Coverage and Rates.

(2) Individuals or households may not receive Federal Assistance grants for real and/or personal property that is located in a special flood hazard area, see § 59.1 of this title. However, if the community in which the damaged property is located is participating in the National Flood Insurance Program (NFIP), then individuals and households can receive assistance. If a community qualifies for and enters the National Flood Insurance Program during the 6-month period following the declaration, the Governor's Authorized Representative (GAR) may request a time extension from FEMA (see § 206.103) to accept registrations and to process grant applications in that community.

(3) Flood insurance purchase requirement:

(i) Individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive a grant, due to flood damages, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the grant amount, in order to get any Federal assistance for future flood damage to

any insurable property. This applies only to real and personal property that is in or will be in a designated Special Flood Hazard Area and that can be insured under the National Flood Insurance Program.

(A) If the grantee is a homeowner, flood insurance coverage must be maintained on the structure at the flood-damaged property address for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged structure.

(B) If the grantee is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged rental unit. The restriction is lifted once the renter moves from the rental unit.

(ii) FEMA may not provide financial assistance for acquisition or construction purposes to individuals or households who fail to buy and maintain flood insurance required under paragraph (k)(3)(i) of this section.

(l) *Citizenship requirement.* (1) Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L.104–193), FEMA may only provide assistance under this subpart to applicants who are:

(i) *U.S. Citizens*—born in the United States, derivative citizens, or naturalized citizens;

(ii) *Non-Citizen Nationals*—generally, persons born in certain outlying possessions of the United States, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements); or

(iii) *Qualified Aliens*—this category generally includes individuals who are Lawful Permanent residents (possessing an alien registration receipt card, sometimes referred to as a "Green Card") or those with legal status provided in Pub. L. 104–193 (admission into the U.S. for humanitarian purposes).

(2) For purposes of this subpart, the citizenship requirements listed in this paragraph do not apply to citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) when residing in the FSM or RMI at the time a declared major disaster or emergency impacts this area. However, the requirements of this paragraph continue to apply to such citizens when an event affects them while residing outside FSM or RMI.

§ 206.102 Definitions.

Adequate, alternate housing means housing that: Accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant in the realization of a realistic permanent housing plan.

Alternative housing resources means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.

Applicant means an individual or household who has applied for assistance under this subpart.

Assistance from other means includes monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.

Dependent means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not actually claim them on the tax return.

Displaced applicant means one whose primary residence is uninhabitable, inaccessible, required by the landlord or not functional as a direct result of the disaster and has no other housing available in the area, i.e., a secondary home or vacation home.

Effective date of assistance means the date that the applicant was determined eligible for assistance.

Eligible hazard mitigation measures are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damages to essential components of the home.

Fair market rent means housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area.

Financial ability means the capability of the applicant to pay the housing costs on a permanent basis. The determination is based on 30 percent of the post-disaster household income. At the discretion of FEMA, extreme or unusual financial circumstances may be considered when computing financial ability.

Financial assistance means a cash grant that may be provided to eligible individuals and households, usually in the form of a check or electronic funds transfer.

Functional means an item or home capable of being used for its intended purpose.

Household means all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, plus any additions during the assistance period, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

Housing costs means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, and utility costs.

Inaccessible means as a result of the incident, the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health or safety problems.

Individuals mean all persons living in a household who are not dependents.

In-kind contributions mean something other than monetary assistance, such as goods, commodities or services.

Manufactured housing sites means those sites used for the placement of government or privately owned mobile homes, travel trailers, and other manufactured housing units, including:

(1) *Commercial Site,* a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private Site,* a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group Site,* a site provided by the State that accommodates two or more units and is complete with utilities.

Necessary expense means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

Occupant means a resident of a housing unit.

Owner-occupied means that the residence is occupied by:

(1) The legal owner;

(2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or

(3) A person who has lifetime occupancy rights with formal title vested in another.

Permanent housing plan means a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

Primary residence means the dwelling where the applicant normally lives, during the major portion of the calendar year, or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income.

Reasonable commuting distance means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, *e.g.*, mountainous regions or bridges out and the normal commuting patterns of the area.

Safe means secure from disaster-related hazards or threats to occupants.

Sanitary means free of disaster-related health hazards.

Serious need means the requirement for an item, or service, that is essential to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.

Uninhabitable—means the dwelling is not safe, sanitary or fit to occupy.

We, our, or *us* mean FEMA.

§ 206.103 Registration Period.

(a) *Initial period.* The standard FEMA registration period is 60 days following the date that the President declares an incident a major disaster or an emergency.

(b) *Extension of the registration period.* The Regional Director or his/her designee may extend the registration period when the State requests more time to collect registrations from the affected population. The Regional Director or his/her designee may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Late registrations.* After the standard or extended registration period ends, FEMA will accept late registrations for an additional 60 days. We will process late registrations for those registrants who provide suitable documentation to support and justify the reason for the delay in their registration.

§ 206.104 Eligibility Factors.

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for such assistance under section 408 of the Stafford Act and this subpart. FEMA may only provide assistance:

(1) When the individual or household meets citizenship requirements defined in § 206.101(l);

(2) When the individual or household has incurred a necessary expense or serious need in the disaster area, without regard to their residency in the area, within the State in which the President has declared an emergency or major disaster;

(3) In a situation where the applicant has insurance, when the individual or household files a claim with their insurance provider for all potentially applicable types of insurance coverage and is denied;

(4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later; the insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs; or when housing is not available on the private market;

(5) When the individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance;

(6) When the applicant agrees to refund to FEMA or the State any portion of the grant that the applicant receives or is eligible to receive as assistance from another source;

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and

(8) With respect to housing assistance, if a renter's rental unit is no longer available;

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For housing to individuals or households who have adequate rent-free housing accommodations;

(3) For housing to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own unoccupied rental property that meets their temporary housing needs;

(4) For housing to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;

(5) For housing for improvements or additions to the pre-disaster condition of property, except those required to comply with local and State ordinances or eligible mitigation measures;

(6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be delayed, or who have refused assistance from insurance providers;

(7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental and funeral expenses to such individuals or households;

(8) For business losses, including farm businesses and self-employment; or

(9) For any items not otherwise authorized by this section.

§ 206.105 Criteria for Continued Assistance.

(a) FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide continued Housing assistance up to18 months, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) Additional Criteria for Continued Assistance:

(1) All applicants requesting continued rent assistance must establish a realistic permanent housing plan no later than the first certification for continued assistance. Applicants will be required to provided documentation showing that they are making efforts to obtain permanent housing.

(2) Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(4) FEMA may certify pre-disaster owners for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(5) Individuals or households requesting additional assistance for personal property, transportation, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs will be required to submit information and/or documentation identifying the continuing need.

§ 206.106 Appeals.

(a) Under the provisions of section 423 of the Stafford Act, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. Applicants must file their appeal within 60 days after the date that we notify the applicant of the award or denial of assistance. Applicants may appeal the following:

(1) Eligibility for assistance, including recoupment;

(2) Amount or type of assistance;

(3) Cancellation of an application;

(4) The rejection of a late application;

(5) The denial of continued assistance under section 206.105, Criteria for Continued Assistance;

(6) FEMA's intent to collect rent for occupants of a housing unit that FEMA provides;

(7) Termination of direct housing assistance;

(8) Denial of a request to purchase a FEMA-provided housing unit at the termination of eligibility;

(9) The sales price of a FEMA-provided housing unit they want to purchase; or

(10) Any other eligibility-related decision.

(b) Appeals must be in writing and explain the reason(s) for the appeal. The applicant or person who the applicant authorizes to act on his or her behalf must sign the appeal. If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent him, her or them.

(c) Applicants must appeal to the Regional Director or his/her designee for decision made under this subpart, except when FEMA has made a grant to the State to provide assistance to individuals and households under § 206.111(a), State Administration of Other Needs Program.

(d) An applicant may ask for a copy of information in his/her or their file by writing to FEMA or the State. If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent him, her, or them.

(e) The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal.

(f) The Regional Director or his/her designee or appropriate State official will review the original decision after receiving the appeal. FEMA or the State will give the appellant a written notice of the disposition of the appeal within 90 days of the receiving the appeal. The decision of the appellate authority is final.

§ 206.107 Recovery of Funds.

(a) The applicant must agree to repay to FEMA or the State from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA or the State when FEMA or the State determines that FEMA or the State made the grant erroneously, the applicant spent the money inappropriately, or the applicant obtained the grant through fraudulent means.

(c) If FEMA has approved a grant to the State to provide assistance under section 206.110, then the State must return to FEMA 75 percent of all funds recovered by the State from applicants. FEMA will return to the State 25 percent of all funds recovered from applicants under § 206.110 when FEMA administers the program.

§ 206.108 Housing Assistance.

(a) *Purpose.* FEMA may provide financial or direct assistance under this section to respond to the disaster-related housing needs of individuals and households.

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Financial assistance.* Eligible individuals and households may receive financial assistance to rent alternate housing resources, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings. In addition, FEMA may provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing and reasonable lodging expenses incurred because of the disaster.

(A) We will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the rental assistance on the Department of Housing and Urban Development's current fair market rates for existing rental units. FEMA will further base the applicable rate on the household's bedroom requirement and the location of the rental unit.

(C) The occupant is responsible for all utility costs and security deposits, except where the utility does not meter services separately and utilities are a part of the rental charge. The Regional Director or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to individuals or households who lack available housing resources and would be unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a household in a single application and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(C) Any site upon which a FEMA-provided housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and Part 10, Environmental Considerations.

(D) All utility costs and security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(E) FEMA-provided housing units may be placed in the following locations:

(*1*) A commercial site that is complete with utilities; when the Regional Director or his/her designee determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than

other types of resources, then Federal assistance may be authorized for such actions.

(*2*) A private site that an applicant provides, complete with utilities; when the Regional Director or his/her designee determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(*3*) A group site the State or local government provides that accommodates two or more units and is complete with utilities; when the Regional Director or his/her designee determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(*4*) A group site provided by FEMA, if the Regional Director or his/her designee determines that such a site would be more economical or accessible than one that the State or local government provides.

(F) At the end of the 18-month period of assistance, FEMA may charge up to the fair market rent rate for each temporary housing unit provided. We will base the rent charged on the number of bedrooms occupied and needed by the household. When establishing the amount of rent, FEMA will take into account the financial ability of the household.

(G) We may terminate direct assistance for reasons that include, but are not limited to, the following:

(*1*) The period of assistance expired under § 206.101(d) and has not been extended;

(*2*) Adequate alternate housing is available to the occupant(s);

(*3*) The occupant obtained housing assistance either through misrepresentation or fraud;

(*4*) The occupant failed to comply with any term of the lease/rental agreement or other rules of the site where the unit is located.

(*5*) The occupant does not provided documentation showing that they are working towards the permanent housing plan

(H) FEMA will provide written notice when initiating the termination of any assistance that we provide under our lease agreements. This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as the Regional Director or his/her designee deems appropriate after the termination date, including fair market rent for the unit.

(I) Duplication of benefits may occur when an applicant has additional living expense insurance benefits to cover the cost of renting alternate housing. In these instances, FEMA may provide a temporary housing unit if adequate alternate housing is not available, or if doing so is in the best interest of the household and the government. We will establish fair market rent, not to exceed insurance benefits available.

(2) *Repairs.* (i) FEMA may provide financial assistance for the repairs of uninsured disaster-related damages to an owner's primary residence. The funds are to help return owner-occupied primary residences to a safe and sanitary living or functioning condition. Repairs may include utilities and residential infrastructure (such as private access routes, wells and/or septic systems) damaged by a major disaster.

(ii) The type of repair FEMA authorizes may vary depending upon the nature of the disaster. We may authorize repair of items where feasible or replacement when necessary to insure the safety or health of the occupant and to make the residence functional.

(iii) FEMA may also provide assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities or infrastructure.

(iv) Eligible individuals or households may receive up to $5,000 under this paragraph, adjusted annually to reflect changes in the CPI, to repair damages to their primary residence without first having to show that the assistance can be met through other means, except insurance proceeds.

(v) The individual or household is responsible for obtaining local permits or inspections that applicable State or local building codes may require.

(3) *Replacement.* FEMA may provide financial assistance under this paragraph to replace a disaster-damaged owner's occupied, primary residence if the dwelling can be replaced, in its entirety, for $10,000 or less, as adjusted annually to reflect changes in the CPI.

(4) *Permanent housing construction.* FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent housing in insular areas outside the continental United States and in other remote locations when alternative housing resources are not available and the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost-effective.

(c) *Eligible costs.* (1) Repairs to the primary residence or replacement of items must be disaster-related and must be of average quality, size, and capacity, taking into consideration the needs of the occupant. Repairs to the primary residence are limited to restoration of the dwelling to a safe and sanitary living or functioning condition and may include:

(i) Repair or replacement of the structural components, including foundation, exterior walls, and roof;

(ii) Repair or replacement of the structure's windows and doors;

(iii) Repair or replacement of the structure's Heating, Ventilation and Air Conditioning System;

(iv) Repair or replacement of the structure's utilities, including electrical, plumbing, gas, water and sewage systems;

(v) Repair or replacement of the structure's interior, including floors, walls, ceilings, doors and cabinetry;

(vi) Repair to the structure's access and egress, including privately owned access road;

(vii) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks; and

(viii) Items or services determined to be eligible hazard mitigation measures.

(2) Permanent Housing Construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

§ 206.109 Disposal of Housing Units.

(a) FEMA may sell housing units purchased under § 206.108(b)(1)(ii), Temporary Housing, Direct Assistance, as follows:

(1) Sale to an applicant.

(i) Sale to the individual or household occupying the unit, if the occupant lacks permanent housing, has a site that complies with local codes and ordinances and Part 9 of this Title.

(ii) Adjustment to the sales price.

(A) FEMA may approve adjustments to the sales price when selling a housing unit to the occupant of a unit, if the purchaser's financial resources are less than the fair market value of the home or unit, and when doing so is in the best interest of the applicant and FEMA.

(iii) We will deposit the proceeds of a sale under paragraph (a)(1) of this

section in the appropriate Disaster Relief Fund account.

(iv) FEMA may sell a housing unit to an individual or household only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the unit if it is or will be in a designated Special Flood Hazard Area.

(2) Other methods of disposal:

(i) FEMA may sell, transfer, donate, or otherwise make a unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell housing units at a fair market value to any other person.

(b) A unit will be sold "as is, where is", except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that he/she may have to bring the unit up to codes and standards that are applicable at the proposed site.

§ 206.110 Financial Assistance to Address Other Needs.

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. To qualify for a grant under this section, an applicant must also:

(1) Apply to the United States Small Business Administration's (SBA) Disaster Home Loan Program for all available assistance under the program; and

(2) Be declined for SBA Disaster Home Loan Program assistance; or

(3) Demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster.

(b) *Types of assistance.*—(1) *Medical, dental, and funeral expenses.* FEMA may provide financial assistance for medical, dental and funeral items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(2) *Personal property, transportation, and other expenses.* (i) FEMA may provide financial assistance for personal property and transportation items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(ii) FEMA may provide financial assistance for other items or services that are not included in the specified categories for other assistance but which FEMA approves, in coordination with the State, as eligible to meet unique necessary expenses and serious needs of individuals and households.

(c) *Eligible costs.*—(1) *Personal property.* Necessary expenses and serious needs for repair or replacement of personal property are generally limited to the following:

(i) Clothing;

(ii) Household items, furnishings or appliances;

(iii) Tools, specialized or protective clothing, and equipment required by an employer as a condition of employment;

(iv) Computers, uniforms, schoolbooks and supplies required for educational purposes; and

(v) Cleaning or sanitizing any eligible personal property item.

(2) *Transportation.* Necessary expenses or serious needs for transportation are generally limited to the following:

(i) Repairing or replacing vehicles; and

(ii) Financial assistance for public transportation and any other transportation related costs or services.

(3) *Medical expenses.* Medical expenses are generally limited to the following:

(i) Medical costs;

(ii) Dental costs; and

(iii) Repair or replacement of medical equipment.

(4) *Funeral expenses.* Funeral expenses are generally limited to the following

(i) Funeral services;

(ii) Burial or cremation; and

(iii) Other related funeral expenses.

(5) *Moving and storage expenses.* Necessary expenses and serious needs related to moving and storing personal property away from the threat of damage including the evacuation, storage, and return of the personal property to the individual or household's place of residence.

(6) *Other.* Other disaster-related expenses not addressed in the above categories may include:

(i) Costs of towing, setup, and connecting or reconnecting essential utilities for an owner-occupied manufactured housing unit not provided by FEMA; and

(ii) Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

§ 206.111 State Participation in the Section 408 Program.

(a) *State Administration of Other Needs Program.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under § 206.110 of this subpart. The total Federal grant under this paragraph will be equal to 75 percent of the cost of meeting necessary expenses or serious needs of individuals and households, plus State administrative costs not to exceed 5 percent of the Federal grant. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with § 206.110 of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section.

(b) *State Participation in the Management of the Temporary Housing-Direct Assistance Program.* A State may request authority to participate in the management of the Temporary Housing-Direct Assistance Program that we describe at § 206.108(b)(1)(ii) of this subpart. The total Federal cost under this paragraph will be 100 percent. The Regional Director or his/her designee may approve such a request if State participation in the management of the program would be in the best interest of the Federal government and those needing housing assistance.

(1) Any State that participates in the management of a Temporary Housing-Direct Assistance Program must do so consistent with § 206.108(b)(1)(ii) of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section;

(2) Before a State may participate in the management of the Temporary Housing-Direct Assistance Program, the State must agree to hold and save the United States free from damages and indemnify the Federal Government against any claims arising from the Temporary Housing-Direct Assistance Program;

(3) The State may perform one or more of the following activities in the course of its participation in the management of the Temporary Housing-Direct Assistance Program:

(i) Site assessment;

(ii) Unit procurement and installation;

(iii) Unit maintenance;

(iv) Staging operations;

(v) Group site design and development;

(vi) Occupant Services (Leasing in and certifying occupants for continuing assistance); and

(vii) Site Restoration.

(c) *FEMA-State Memorandum of Understanding.* The delivery of assistance by a State under this section is contingent upon and governed by a FEMA-State Memorandum of Understanding (MOU), which describes the partnership between FEMA and the State for the delivery of assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(1) General. The MOU explains the roles and responsibilities of FEMA and the State in the provision of assistance by the State under this section;

(2) The Regional Director and the Governor or designee will execute the MOU, which they will renew annually. The effective date of each year's MOU will be January 1, and each executed MOU will be effective for one year. FEMA and the State may amend executed MOUs during the course of a year.

(3) If both parties do not execute an MOU by January 1, FEMA will administer all assistance under this section for that calendar year.

(4) The MOU will include provisions relating to the need for the State to comply with this section and the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including parts 11 and 13 of this title.

(5) The MOU will include provisions for State compliance with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151.

Dated: January 15, 2002.

Michael D. Brown,

Acting Deputy Director.

[FR Doc. 02–1386 Filed 1–22–02; 8:45 am]

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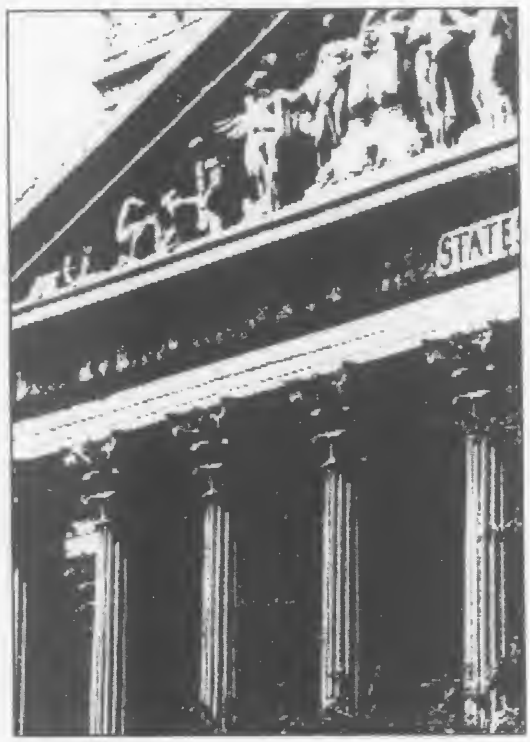

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