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WASHINGTON, DC

WHEN: September 20, 2001—9:00 a.m. to noon

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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RESERVATIONS: 202–523–4538; or
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Presidential Documents

Title 3—

The President

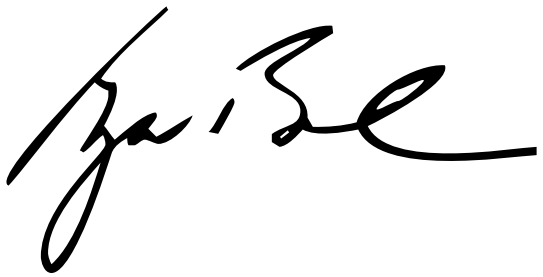
Presidential Determination No. 2001–24 of August 18, 2001

Military Drawdown for Tunisia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President by the Constitution and laws of the United States, including Title III (Foreign Military Financing) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, as enacted in Public Law 106–429 (Title III), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, and military education and training of the aggregate value of $5 million for Tunisia, consistent with the authority provided under Title III, for the purposes of part II of the Foreign Assistance Act of 1961.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 18, 2001.

[FR Doc. 01–22643
Filed 9–6–01; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 2001–25 of August 31, 2001

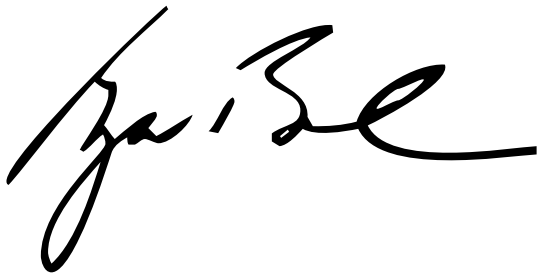
Presidential Determination on the Proposed Protocol Amending the Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Morocco Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Protocol Amending the Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Morocco Concerning Peaceful Uses of Nuclear Energy signed at Washington on May 30, 1980, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Protocol will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Protocol and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 31, 2001.

[FR Doc. 01–22644
Filed 9–6–01; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 245, 248, 274a, and 299

[INS No. 2117–01; AG Order No. 2502–2001]

RIN 1115–AG08

V Nonimmigrant Classification; Spouses and Children of Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a new V nonimmigrant classification for certain spouses and children of lawful permanent resident aliens that was added by section 1102 of the Legal Immigration Family Equity Act (LIFE) of 2000, Public Law 106–553, effective on December 21, 2000. To be eligible for this new nonimmigrant category, the alien must be the beneficiary of an immigrant visa petition that has been pending with the Immigration and Naturalization Service (Service) for at least 3 years, or that has been approved and 3 years have passed since the filing date. Eligible aliens may enter and work in the United States, and continue to reside here while they wait for the immigrant visa petition to be approved; their priority date to be reached for filing for adjustment of status or an application for an immigrant visa; and the adjudication of that application. This interim rule sets forth the eligibility standards for V classification and the procedures for changing to V nonimmigrant status while in the United States, and for obtaining employment authorization based on V nonimmigrant status.

DATES: *Effective date.* This rule is effective on September 7, 2001.

Comment date. Comments must be submitted on or before November 6, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536, via fax to (202) 305–0143, or via email to *INSREGS@USDOJ.GOV*. To ensure proper handling, please reference the INS No. 2117–01 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

Section 1102 of the LIFE Act amends the Immigration and Nationality Act, as amended (8 U.S.C. 1101, *et seq.*) (Act), in three ways:

(1) Section 1102 amends section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) to add a new nonimmigrant classification, paragraph (V), for certain spouses and children of lawful permanent residents (LPRs), who have waited at least 3 years for the availability of an immigrant visa number in the family-based second (F2A) preference category in accordance with the State Department's monthly Visa Bulletin. Eligible spouses and children (under 21 years old and unmarried) of LPRs outside the United States may apply for a V nonimmigrant visa abroad and for admission to the United States as a V nonimmigrant. If already present in the United States, eligible aliens may obtain V nonimmigrant status while remaining in the United States.

(2) Section 1102 of LIFE also adds section 214(o) to the Act (8 U.S.C. 1184(o)) in order to provide the terms and conditions of V nonimmigrant status and employment authorization.

(3) Section 1102 of LIFE makes conforming amendments to sections 214(b) and 214(h) of the Act (8 U.S.C. 1184(b) and 1184(h)) to include reference to the V nonimmigrant classification.

Who Is Eligible for V Nonimmigrant Status?

To be eligible for V nonimmigrant status, the alien must be the beneficiary of an immigrant visa petition, Form I–130, Petition for Alien Relative, that was filed by the LPR on or before December 21, 2000, under the F2A preference category of section 203(a)(2)(A) of the Act (8 U.S.C. 1153(a)(2)(A)). The child of a petitioned-for spouse or child beneficiary is also eligible for such status if he or she is accompanying or following to join such an alien.

The alien is eligible for V status if the Form I–130 immigrant visa petition has been pending for 3 years or more. In addition, the alien is eligible for V status after the visa petition has been approved and 3 years have passed since the date of filing, in either of the following circumstances:

(1) An immigrant visa number is not yet available to the beneficiary; or

(2) If an immigrant visa number is available to the beneficiary, his or her application for an immigrant visa abroad or application for adjustment of status under section 245 of the Act (8 U.S.C. 1255) is still pending.

An eligible spouse of an LPR will be classified as V–1. An eligible child of an LPR will be classified as V–2. The child of either, if eligible to accompany or follow to join the principal alien under section 203(d) of the Act (8 U.S.C. 1153(d)), will be classified as V–3.

An alien eligible for V nonimmigrant status may apply for a V nonimmigrant visa at a consular office abroad or, if the alien is already in the United States, he or she may apply to the Service for classification as a V nonimmigrant. An alien in V nonimmigrant status in the United States may obtain employment authorization.

What Are the Terms and Conditions of V Nonimmigrant Status?

Aliens in V–1, V–2, or V–3 nonimmigrant status are authorized to remain in the United States until their authorized period of admission expires, or until one of the following is denied: (1) the Form I–130, Petition for Alien Relative, filed by the LPR on behalf of his or her spouse or child; (2) the alien's application for an immigrant visa; or (3) the alien's application for adjustment of status. If the V–1 or V–2 alien's status is terminated for any of these reasons,

the V–3 status of any derivative child will simultaneously be terminated.

Aliens in the United States in V nonimmigrant status must abide by the terms and conditions of that status as set forth in section 214 of the Act (8 U.S.C. 1184). Since V nonimmigrants are admitted to the United States to await the availability of an immigrant visa number in the F2A preference category (spouses and minor children of lawful permanent residents), in accordance with the State Department's monthly Visa Bulletin, they must continue to be eligible for that preference category.

An alien who is no longer eligible for the F2A preference category described in section 203(a)(2)(A) of the Act (8 U.S.C. 1153(a)(2)(A)) is no longer eligible for V nonimmigrant status. For example, an alien would no longer be eligible if the qualifying marriage that forms the basis for the Form I–130 is terminated or the child petitioned for on the Form I–130 reaches the age of 21. If the Form I–130 is withdrawn by the petitioner, or if it is revoked under section 205 of the Act (8 U.S.C. 1155), then the alien is no longer considered to be in valid V classification beginning 30 days after the withdrawal or event that causes the revocation (8 U.S.C. 1184(p)(3)). (However, the Service notes that a spouse or child of an abusive lawful permanent resident may be eligible in certain circumstances to file a self-petition for classification as a preference immigrant, as provided in 8 CFR 204.4, even if the LPR has withdrawn the Form I–130 that was filed on his or her behalf.)

How Can an Eligible Alien Who Is Outside the United States Obtain a V Nonimmigrant Visa?

Eligible aliens who live abroad may obtain a V nonimmigrant visa from the Department of State by applying at a United States consular office. Eligible applicants must demonstrate that they meet the requirements of section 101(a)(15)(V) of the Act (8 U.S.C. 1101(a)(15)(V)).

The Department of State published an interim regulation on April 16, 2001, at 66 FR 19390 (22 CFR 41.86), that sets forth procedures for applying for a V nonimmigrant visa at a consular office abroad.

Waiver of Ground of Inadmissibility

Section 1102(b) of LIFE adds section 214(o) to the Act, (8 U.S.C. 1184(o)) which, among other things, provides that aliens applying for admission to the United States in V nonimmigrant status are exempt from the ground of inadmissibility found at section 212(a)(9)(B) of the Act (8 U.S.C. 1182(a)(9)(B)), relating to unlawful presence. This means that, for the purpose of admission as a V nonimmigrant, aliens who have accrued more than 180 days of unlawful presence in the United States are not subject to the 3- and 10-year bars to admission.

It is important to note that, as discussed in more depth below, section 214(o) of the Act waives this ground of inadmissibility only for V nonimmigrant admissions (or changing to a V nonimmigrant status), and not for purposes of obtaining immigrant status. When a V nonimmigrant applies for adjustment or for an immigrant visa to obtain permanent resident status, he or she is still subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act relating to unlawful presence and the bars to admissibility.

How Can an Eligible Alien Who Is in the United States Obtain V Nonimmigrant Status?

Beginning September 7, 2001, eligible aliens in the United States who wish to obtain V nonimmigrant status must file the Form I–539, Application to Change Nonimmigrant Status, with the Service and pay the application fee, currently $120, required by 8 CFR 103.7(b)(1), or request a waiver of the application fee in accordance with 8 CFR 103.7(c). All aliens 14 to 79 years of age who are filing Form I–539 to obtain V nonimmigrant status must submit a service fee for fingerprinting, currently $25, with their application. In addition to the instructions listed on the Form I–539, all aliens applying for V nonimmigrant status must follow the supplemental instructions found on Supplement A to Form I–539. Applications should be submitted to: U.S. Immigration and Naturalization Service, P.O. Box 7216, Chicago, IL 60680–7216.

Supplement A to Form I–539 includes instructions specific to applicants for V nonimmigrant status in addition to those found on Form I–539.

Although the statute uses the term ''adjust,'' the Service views the conversion to V nonimmigrant status as a ''change'' from one (usually) nonimmigrant status to another nonimmigrant status, rather than an ''adjustment'' of status from nonimmigrant status to lawful permanent resident (LPR) status. This is especially so because V nonimmigrants are required to be pursuing LPR status through the adjustment of status or the immigrant visa process. For these reasons, the Service is planning to use the Form I–539 and the term ''change'' of status.

Medical Examination

An applicant applying for V nonimmigrant status must submit, along with his or her application, the results of a medical examination by a civil surgeon. The alien must submit this information on Form I–693, Medical Examination of Aliens Seeking Adjustment of Status, completed by a civil surgeon. Each Service district office maintains a list of physicians in the area who have been designated as civil surgeons by the Service. An applicant for V nonimmigrant status is not required to submit the vaccination supplement to Form I–693.

Fingerprinting Appointment

After receiving the application and proper fees, the applicant will be scheduled for fingerprinting at an Application Support Center (ASC). An applicant who does not appear for fingerprinting without previously notifying the Service may have his or her application denied under 8 CFR 103.2(b)(13).

Evidence

An alien applying for V nonimmigrant status should submit proof of filing of the immigrant petition that qualifies the alien for V status. Proof of filing may be in the form of Form I–797, Notice of Action, which serves as a receipt of the petition or as a notice of approval, or a receipt for the filed petition or notice of approval issued by a local district office. If the alien does not have such proof, the Service will review other forms of evidence, such as correspondence to or from the Service regarding a pending petition.

If the alien does not have any of the above items, but believes he or she is a beneficiary of a qualifying petition and as such is eligible for V nonimmigrant status, he or she should provide information indicating where and when the petition was filed, the name and alien number of the petitioner, and the names of all the beneficiaries.

Affidavit of Support

Aliens entering as V nonimmigrant aliens are not subject to the legally binding Affidavit of Support requirements of section 213A of the Act (8 U.S.C. 1183a) and 8 CFR part 213A, until they file for adjustment of status to LPR. However, the Service may request that an applicant for V status submit the non-binding Affidavit of Support, Form I–134.

Grounds of Inadmissibility

Aliens applying to the Service for V nonimmigrant status must be eligible for admission to the United States. This means they must not be inadmissible under any of the grounds found at section 212(a) of the Act, except those from which the LIFE Act explicitly exempts them. Section 214(o)(3) of the Act, as added by the LIFE Act, exempts an alien applying to obtain V nonimmigrant status from three grounds of inadmissibility: section 212(a)(6)(A) (aliens present without admission or parole); section 212(a)(7) (aliens not in possession of a valid, unexpired passport or immigrant or nonimmigrant visa); and section 212(a)(9)(B) (aliens unlawfully present). The fact that an alien is inadmissible under one of these three grounds does not make him or her ineligible to obtain the V nonimmigrant status. Thus, the alien need not have been maintaining lawful status at the time of applying to the Service to obtain V nonimmigrant status. An alien who is inadmissible as a nonimmigrant on any other ground under section 212(a) of the Act may apply to the Service for any available nonimmigrant waivers.

It is important to note that while section 214(o) of the Act waives these three grounds of inadmissibility for change to V nonimmigrant status, there is no corresponding exemption of these same grounds of inadmissibility when an alien in the V nonimmigrant status later applies for an immigrant visa or for adjustment of status to LPR. For example, if an alien in V nonimmigrant status, who has accrued more than 1 year of unlawful presence in the United States, travels abroad and is readmitted as a V nonimmigrant, that alien, when he or she departs the United States, triggers the 10-year bar to admission under section 212(a)(9)(B) of the Act. Section 214(o) exempts him or her from this ground of inadmissibility for purposes of obtaining V nonimmigrant status, but does not exempt the alien from that ground of inadmissibility when he or she later applies for an immigrant visa or for adjustment to LPR status. That means that he or she will be unable to adjust status to LPR for 10 years from the date of departure, unless an individual waiver for that ground of inadmissibility is granted.

To the extent that he or she may be eligible, the alien applying to adjust status may apply for the waivers found at section 212(g), (h), (i), and (a)(9)(B)(v) of the Act.

What Will Be the Period of Authorized Stay for V Nonimmigrants?

The Service will give aliens granted admission to the United States in the V nonimmigrant classification a maximum 2-year period of admission. Similarly, the Service will give aliens approved for a change of status to V nonimmigrant status a maximum 2-year period of admission. In either case, the period of V nonimmigrant status may be extended, as discussed below, if the alien continues to remain eligible for V status.

Children in V–2 or V–3 Status Who Reach the Age of 21 or Get Married

If an alien is 19 years old or older and applies for admission to the United States in V–2 or V–3 status, or for change to V–2 or V–3 status in the United States, he or she will be granted a period of admission that will end on the day before the alien turns 21 years of age.

One of the eligibility requirements for V classification is that an alien must be the beneficiary of a petition for status filed under section 203(a)(2)(A) of the Act—the Form I–130 for spouses or children of an LPR. *See* Pub. L. No. 106–553, sec. 1102(a)(3), 114 Stat. At 2762A–142. The term ''child'' is defined in section 101(b)(1) of the Act to mean, with certain qualifications, an unmarried person under 21 years of age. *See* 8 U.S.C. 1101(b)(1). Since the eligibility criteria of section 1102(a) do not include section 203(a)(2)(B) of the Act (unmarried sons or daughters of an LPR), an alien 21 years of age or over who is the son or daughter of an LPR is not eligible for V–2 classification. Likewise, an alien who gets married is no longer eligible for V classification as a ''child.'' Therefore, if the child of an LPR is admitted to the United States as a V–2 nonimmigrant and subsequently turns 21 or gets married, he or she is no longer eligible for that nonimmigrant status. Since the law provides for V–3 status for a derivative child of a principal alien, an alien will no longer be eligible for that nonimmigrant status after turning 21 or getting married.

How Can an Alien Obtain Employment Authorization Based on V Nonimmigrant Status?

An alien in valid V nonimmigrant status is eligible for employment authorization as long as he or she remains in that status. In order to obtain employment authorization, the alien must submit Form I–765, Application for Employment Authorization, with the application fee, currently $100, as required by 8 CFR 103.7(b)(1), or a request for a fee waiver in accordance with 8 CFR 103.7(c). An alien in V nonimmigrant status should submit his or her Form I–765 to: U.S. Immigration and Naturalization Service, P.O. Box 7216, Chicago, IL 60680–7216.

If the alien's application for employment authorization is approved, the Service will grant the alien employment authorization for a period of time to match his or her period of authorized stay as a V nonimmigrant. An alien already in the United States who is applying for V status may file for employment authorization at the same time he or she files Form I–539 and Supplement A to Form I–539.

How Can an Alien Obtain an Extension of His or Her V Nonimmigrant Status?

If an alien's period of admission is about to expire and the alien continues to be eligible for V nonimmigrant status, the alien may apply for an extension, using Form I–539 and Supplement A to Form I–539. Applications for extension of V nonimmigrant status should be submitted with the application fee for Form I–539, currently $120, as required by 8 CFR 103.7(b)(1), or the alien may request a fee waiver in accordance with 8 CFR 103.7(c). Applicants for an extension of V nonimmigrant status do not need to submit the fingerprinting service fee, nor do they need to have a medical examination or submit Form I–693 (medical examination). Applications should be submitted to: U.S. Immigration and Naturalization Service, P.O. Box 7216, Chicago, IL 60680–7216.

An alien granted an extension of V nonimmigrant status will be given a period of authorized stay not to exceed 2 years. A child in V nonimmigrant status who is 19 years old or older will be granted an extension valid until the day before his or her 21st birthday.

A V nonimmigrant who has filed an application for adjustment of status (Form I–485) is still eligible for extension of V nonimmigrant status as long as the adjustment application remains pending. However, any applicant for adjustment of status can obtain many of the same benefits as are provided for in the V status. Applicants for adjustment of status are considered to be in a period of stay authorized by the Attorney General while their application remains pending, and they are eligible to obtain employment authorization and to apply for advance parole to return to the United States after travel abroad.

What if an Alien Has an Approved Petition and a Current Priority Date but Does Not Have a Pending Application for an Immigrant Visa Abroad or an Application for Adjustment of Status?

The V visa classification includes aliens who are the beneficiary of an approved immigrant visa petition that was filed more than 3 years earlier, during the time that an immigrant visa is not available or during the time that an application for an immigrant visa abroad or for adjustment of status under section 245 of the Act is still pending. However, the Service recognizes that there may be limited circumstances in which an eligible spouse or child has an immigrant visa number available, but has not yet applied either for an immigrant visa abroad or for adjustment to LPR status.

In order to provide aliens time to file the appropriate application when their V status is expiring, the Service will grant a one-time 6-month extension of V nonimmigrant status to such aliens if they are otherwise eligible. Similarly, for an alien in this situation who is applying for admission to the United States on the basis of a V visa that is otherwise valid, the Service will admit the alien for a 6-month period in order to provide time to file the appropriate application.

In either case, if the alien has not filed either an application for adjustment of status or for an immigrant visa by the end of the 6-month period, the alien will no longer be able to extend his or her V nonimmigrant status.

May an Alien Travel Abroad While in V Nonimmigrant Status?

An alien who obtained a V nonimmigrant visa from a consular office abroad may be inspected and admitted to the United States in V nonimmigrant status after traveling abroad as long as the alien possesses a valid, unexpired V visa and remains eligible for V nonimmigrant status.

However, as a general matter, an alien who was granted V nonimmigrant status in the United States by the Service will need to obtain a V visa from a consular office abroad in order to be inspected and admitted to the United States as a V nonimmigrant after traveling abroad. (The alien will not need to apply for a V visa abroad in order to be admitted if he or she has traveled to contiguous territories or adjacent islands, has another valid visa, and is eligible for automatic revalidation.) Procedures for obtaining a V nonimmigrant visa abroad are found in the Department of State regulations at 22 CFR 41.86 (66 FR 19390, April 16, 2001). In addition, the alien must remain eligible for admission in V nonimmigrant status.

A V nonimmigrant with a pending Form I–485, Application to Register Permanent Residence or Adjust Status, does not need to obtain advance parole prior to traveling abroad. Section 1102(d) of the LIFE Act amends section 214 of the Act to include V nonimmigrants in the list of nonimmigrant classifications that may have dual intent. This means that an alien in V nonimmigrant status may be considered a nonimmigrant despite the fact that he or she is an intending immigrant with a filed application for adjustment of status or an immigrant visa. Aliens with dual intent, including V nonimmigrants, do not need to obtain advance parole to protect their pending applications for adjustment of status from being considered abandoned when they depart the United States.

When Is an Alien's V Nonimmigrant Status Terminated?

Under section 214(o)(1)(B) of the Act, as added by section 1102 of LIFE, the period of authorized admission as a V nonimmigrant terminates 30 days after any of the following is denied:

- The qualifying Form I–130;
- The alien's application for an immigrant visa pursuant to the approval of such Form I–130; or
- The alien's Form I–485 under section 245 of the Act pursuant to the approval of such Form I–130.

In the case of a derivative child (V–3), the period of admission is terminated when the Form I–130, Application for Immigrant Visa, or Form I–485 filed by the principal alien (V–1 or V–2) is denied.

The Service considers the withdrawal or revocation of an approved Form I–130 to be the equivalent of a denial. In addition, as discussed above, an alien spouse will lose V–1 status upon divorcing the LPR who filed the immigrant visa petition, and an alien child will lose V–2 or V–3 status upon turning 21 or marrying, because he or she will no longer satisfy the statutory definition of a ''child.''

Unless the alien has some other status under the immigration laws, he or she will become removable upon termination of the V status, and unlawful presence will begin to accrue.

What Happens if the Petitioner of the Form I–130 That Qualified the Beneficiaries for V Nonimmigrant Status Naturalizes?

If the LPR petitioner of the Form I–130 that qualified the beneficiaries for V nonimmigrant status becomes a United States citizen, the petitioner's spouse and children (and any derivative child) will no longer qualify for V nonimmigrant status as defined under section 101(a)(15)(V) of the Act. Their V status will expire when the current period of authorized admission ends, and they will not be eligible to renew V status.

However, as the spouse or child of a person who has now become a United States citizen, the principal beneficiaries will be immediate relatives as defined in section 201(b)(2)(A) of the Act (8 U.S.C. 1151(b)(2)(A)). As provided in 8 CFR 204.2(i)(3), the Form I–130 filed by the LPR automatically will be upgraded to an immediate relative petition.

An immediate relative must still be the beneficiary of a Form I–130, but he or she does not need to wait for an immigrant visa number to be available before filing an application for adjustment of status. A V–1 or V–2 alien with a pending or approved Form I–130 who becomes an immediate relative may apply for adjustment of status (Form I–485) immediately if he or she has not already done so. If the V–1 or V–2 alien has already filed a Form I–485 based on an approved Form I–130 at the time the LPR naturalizes, he or she does not need to file any additional forms.

It is important to note that a U.S. citizen must file a new immigrant visa petition (Form I–130) and an application for adjustment of status (Form I–485) on behalf of any child who was in V–3 status, in order for that child to adjust status. Derivative children in V–3 status were not covered by the Form I–130 previously filed by the LPR on behalf of his or her spouse (V–1) and children (V–2).

Each alien who is the beneficiary of a pending Form I–485 will be able to obtain work authorization while his or her adjustment application is pending.

What Happens if an Alien Is Already in Immigration Proceedings?

If an alien is already in immigration proceedings and believes that he or she may be eligible to apply for V nonimmigrant status, he or she should request before the immigration judge or the Board that the proceedings be administratively closed (or, if the alien has a motion pending before the Board, that the motion be indefinitely continued), in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the

Service finds an alien eligible for the V classification, the Service can adjudicate the application for change of status. In the event that the Service finds an alien ineligible for V status, the Service shall recommence proceedings by filing a motion to re-calendar.

If an Alien Is Already the Subject of a Final Order of Removal, Deportation or Exclusion, What Is the Procedure for Moving To Reopen Based on V Eligibility?

The LIFE Act Amendments contain no special provisions for reopening proceedings where an alien is already the subject of a final order of removal, deportation, or exclusion because that alien is now eligible for V nonimmigrant status. Accordingly, motions to reopen will be governed by the Department of Justice's current rules regarding motions to reopen, 8 CFR 3.23 (before the Immigration Judge) and 3.2 (before the Board of Immigration Appeals), which contain time and numerical limitations on the filing of such motions. *See* 8 CFR 3.23(b)(1) and 3.2(c)(2).

The rules, however, do provide for limited exceptions to these time and numerical limitations, among which is a motion to reopen filed jointly by the alien and the Service counsel in the case. Therefore, an alien who is the subject of a final order who alleges eligibility for V nonimmigrant status may contact the Service counsel to request the filing of a joint motion to reopen. The Service will exercise its discretion in considering such requests. The Service's discretion to join in motions to reopen, however, cannot provide or restore eligibility for discretionary relief that is otherwise barred by the statute (such as in the case of aliens whose orders were entered in absentia for failure to appear, or aliens who failed to voluntarily depart the United States within the time period specified).

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). This interim rule establishes the proper rules and filing procedures for the part of the LIFE Act creating a new ''V'' nonimmigrant classification for spouses and children of lawful permanent resident aliens. According to the legislative history, Congress enacted the V visa in order to ameliorate the effects of the long statutory and administrative backlogs inherent in the immigration of alien relatives by providing for expeditious family reunification. The ''Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000,'' submitted in lieu of a committee report, states that:

> [The LIFE Act] sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and minor children of lawful permanent residents, who are currently having to wait many years for a visa to become available to them. Right now, many of these individuals are even precluded from visiting their spouse or parent in the United States on account of an administrative interpretation that the filing of their petition casts doubt on the bona fides of their applications for visitor visas, indicating that instead they are intending immigrants* * *. The purpose of the V and K visas is to provide a speedy mechanism by which family members may be reunited.

Public Law 106–553 became effective on December 21, 2000, and therefore, immediate implementation of this rule without prior notice and comment is necessary to further the important public interests discussed above in the law's legislative history. Publishing a proposed rule would mean that the rule would not take effect immediately, and because of the necessary comment period, would result, contrary to the public interest, in a lengthy delay in processing for those already eligible for this benefit. In fact, eligible aliens have already filed applications with the Service's local offices while the Service has been in the process of drafting regulations. Many of these applicants are filing on the wrong forms, which do not provide sufficient information for adjudication decisions. The Service has no other recourse but to return the incorrect forms. Therefore, it is of significant importance that the Service publish regulations to establish appropriate procedures as soon as possible. Since further delays with respect to this interim rule are contrary to the public interest, there is good cause under 5 U.S.C. 553 to forgo the prior publication of a proposed rule and to make this rule effective upon the date of publication in the **Federal Register**.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because this regulation affects family members of lawful permanent residents. It does not have an effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The Service estimates that this rule will result in an increase in Service revenue of $35.8 million in Fiscal Year (FY) 2001, $8.8 million in FY 2002, and $1.2 million in FY 2003.

Executive Order 12866

This rule is considered by the Department of Justice to be a significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Assessment of Regulatory Impact on the Family

This immigration law facilitates reunification of families by according preferences to aliens who are the spouse or children of lawful permanent resident aliens. This regulation implements an additional nonimmigrant classification through which these aliens may be reunified with their family member. For this reason, the Attorney General has determined, as provided by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Sec. 654, 112 Stat. 2681, 2681–528–24 (1998) (5 U.S.C. 601, note), that this rule will not have an adverse impact on the strength or stability of the family.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

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

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–539, Supplement A) has been submitted to the Office of Management and Budget for emergency review and approval under the provisions of the Paperwork Reduction Act. The emergency clearance is good for 180 days from the date of OMB approval. Prior to its renewal by OMB, INS will publish a notice in the **Federal Register** soliciting comment on the form. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 if the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.1(a)(2) is amended by:

a. Adding the entry for ''101(a)(15)(V)'' in proper sequential order; and

b. Designating the existing note as ''Note 1'' and by adding a ''Note 2'' to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(2) * * *

Section	Designation
* * * * *	
101(a)(15)(V)	V–1, V–2, or V–3
* * * * *	

Note: The classification designation V–1 is for the spouse of a lawful permanent resident; the classification designation V–2 is for the principal beneficiary of an I–130 who is the child of an LPR; the classification V–3 is for the derivative child of a V–1 or V–2 alien.

§ 214.2 [Amended]

3. Section 214.2 is amended by adding and reserving paragraph (u) and by adding paragraph (v), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(u) [Reserved]

(v) *Certain spouses and children of LPRs.* Section 214.15 of this chapter provides the procedures and requirements pertaining to V nonimmigrant status.

4. Section 214.15 is added to read as follows:

§ 214.15 Certain spouses and children of lawful permanent residents.

(a) *Aliens abroad.* Under section 101(a)(15)(v) of the Act, certain eligible spouses and children of lawful permanent residents may apply for a V nonimmigrant visa at a consular office abroad and be admitted to the United States in V–1 (spouse), V–2 (child), or V–3 (dependent child of the spouse or child who is accompanying or following to join the principal beneficiary) nonimmigrant status to await the approval of:

(1) A relative visa petition;

(2) The availability of an immigrant visa number; or

(3) Lawful permanent resident (LPR) status through adjustment of status or an immigrant visa.

(b) *Aliens already in the United States.* Eligible aliens already in the United States may apply to the Service to obtain V nonimmigrant status for the same purpose. Aliens in the United States in V nonimmigrant status are entitled to reside in the United States as V nonimmigrants and obtain employment authorization.

(c) *Eligibility.* Subject to section 214(o) of the Act, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) of the Act) of an immigrant visa petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, may apply for V nonimmigrant status if:

(1) Such immigrant visa petition has been pending for 3 years or more; or

(2) Such petition has been approved, and 3 or more years have passed since such filing date, in either of the following circumstances:

(i) An immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) of the Act; or

(ii) The alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 of the Act, pursuant to the approval of such petition, remains pending.

(d) *The definition of ''pending''.* For purposes of this section, a pending petition is defined as a petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, that has not been adjudicated. In addition, the petition must have been properly filed according to § 103.2(a) of this chapter, and if, subsequent to filing, the Service returns the petition to the applicant for any reason or makes a request for evidence, the petitioner must satisfy the Service request within the time period set forth at § 103.2(b)(8) of this chapter. If the Service denies a petition, but the petitioner appeals that decision, the petition will be considered pending until the administrative appeal is decided by the Service. A petition rejected by the Service as not properly filed is not considered to be pending.

(e) *Classification process for aliens outside the United States.*

(1) *V nonimmigrant visa.* An eligible alien may obtain a V nonimmigrant visa from the Department of State at a

consular office abroad pursuant to the procedures set forth in 22 CFR 41.86.

(2) *Aliens applying for admission to the United States as a V nonimmigrant at a port-of-entry.* Aliens applying under section 235 of the Act for admission to the United States at a port-of-entry as a V nonimmigrant must have a visa in the appropriate category. Such aliens are exempt from the ground of inadmissibility under section 212(a)(9)(B) of the Act.

(f) *Application by aliens in the United States.* An alien described in paragraph (c) of this section who is in the United States may apply to the Service to obtain V nonimmigrant status pursuant to the procedures set forth in this section and 8 CFR part 248. The alien must be admissible to the United States, except that, in determining the alien's admissibility in V nonimmigrant status, sections 212(a)(6)(A), (a)(7), and (a)(9)(B) of the Act do not apply.

(1) *Contents of application.* To apply for V nonimmigrant status, an eligible alien must submit:

(i) Form I–539, Application to Extend/Change Nonimmigrant Status, with the fee required by § 103.7(b)(1) of this chapter;

(ii) The fingerprint fee as required by § 103.2(e)(4) of this chapter;

(iii) Form I–693, Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(iv) Evidence of eligibility as described by Supplement A to Form I–539 and in paragraph (f)(2) of this section.

(2) *Evidence.* Supplement A to Form I–539 provides instructions regarding the submission of evidence. An alien applying for V nonimmigrant status with the Service should submit proof of filing of the immigrant petition that qualifies the alien for V status. Proof of filing may include Form I–797, Notice of Action, which serves as a receipt of the petition or as a notice of approval, or a receipt for a filed petition or notice of approval issued by a local district office. If the alien does not have such proof, the Service will review other forms of evidence, such as correspondence to or from the Service regarding a pending petition. If the alien does not have any of the items previously mentioned in this paragraph, but believes he or she is eligible for V nonimmigrant status, he or she should state where and when the petition was filed, the name and alien number of the petitioner, and the names of all beneficiaries (if known).

(g) *Period of admission.*

(1) *Spouse of an LPR.* An alien admitted to the United States in V–1 nonimmigrant status (or whose status in the United States is changed to V–1) will be granted a period of admission not to exceed 2 years.

(2) *Child of an LPR or derivative child.* An alien admitted to the United States in V–2 or V–3 nonimmigrant status (or whose status in the United States is changed to V–2 or V–3) will be granted a period of admission not to exceed 2 years or the day before the alien's 21st birthday, whichever comes first.

(3) *Extension of status.* An alien may apply to the Service for an extension of V nonimmigrant status pursuant to this part and 8 CFR part 248. Aliens may apply for the extension of V nonimmigrant status, submitting Form I–539, and the associated filing fee, on or before 120 days before the expiration of their status. If approved, the Service will grant an extension of status to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status for a period not to exceed 2 years, or in the case of a child in V–2 or V–3 status, the day before the alien's 21st birthday, whichever comes first.

(4) *Special rules.* The following special rules apply with respect to aliens who have a current priority date in the United States, but do not have a pending application for an immigrant visa abroad or an application to adjust status.

(i) For an otherwise eligible alien who applies for admission to the United States in a V nonimmigrant category at a designated Port-of-Entry and has a current priority date but does not have a pending immigrant visa abroad or application for adjustment of status in the United States, the Service will admit the alien for a 6-month period (or to the date of the day before the alien's 21st birthday, as appropriate).

(ii) For such an alien in the United States who applies for extension of V nonimmigrant status, the Service will grant a one-time extension not to exceed 6 months.

(iii) If the alien has not filed an application, either for adjustment of status or for an immigrant visa within that 6-month period, the alien cannot extend or be admitted or readmitted to V nonimmigrant status. If the alien does file an application, either for adjustment of status or for an immigrant visa within the time allowed, the alien will continue to be eligible for further extensions of V nonimmigrant status as provided in this section while that application remains pending.

(h) *Employment authorization.* An alien in V nonimmigrant status may apply to the Service for employment authorization pursuant to this section and § 274a.12(a)(15) of this chapter. An alien must file Form I–765, Application for Employment Authorization, with the fee required by 8 CFR 103.7. The Service will grant employment authorization to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status valid for a period equal to the alien's authorized admission as a V nonimmigrant.

(i) *Travel abroad; unlawful presence.*—

(1) *V nonimmigrant status in the United States.* An alien who applies for and obtains V nonimmigrant status in the United States will be issued Form I–797, Notice of Action, indicating the alien's V status in the United States. Form I–797 does not serve as a travel document. If such an alien departs the United States, he or she must obtain a V visa from a consular office abroad in order to be readmitted to the United States as a V nonimmigrant. This visa requirement, however, does not apply if the alien traveled to contiguous territory or adjacent islands, possesses another valid visa, and is eligible for automatic revalidation.

(2) *V nonimmigrants with a pending Form I–485.* An alien in V nonimmigrant status with a pending Form I–485 (Application to Register Permanent Residence or Adjust Status) that was properly filed with the Service does not have to obtain advance parole in order to prevent the abandonment of that application when the alien departs the United States.

(3) *Unlawful presence.*—

(i) *Nonimmigrant admission.* An alien otherwise eligible for admission as a V nonimmigrant is not subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act. This is true even if the alien had accrued more than 180 days of unlawful presence in the United States and is applying for admission as a nonimmigrant after travel abroad.

(ii) *Permanent resident status.* A V nonimmigrant alien is subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act when applying for an immigrant visa or for adjustment of status to that of a lawful permanent resident. Therefore, a departure from the United States at any time after having accrued more than 180 days of unlawful presence will render the alien inadmissible under that section for the purpose of adjustment of status or admission as an immigrant, unless he or she has obtained a waiver under section 212(a)(9)(B)(v) of the Act or falls within one of the exceptions in section 212(a)(9)(B)(iii) of the Act.

(j) *Termination of status.*—

(1) *General.* The status of an alien admitted to the United States as a V nonimmigrant under section 101(a)(15)(V) of the Act shall be automatically terminated 30 days following the occurrence of any of the following:

(i) The denial, withdrawal, or revocation of the Form I–130, Petition for Immediate Relative, filed on behalf of that alien;

(ii) The denial or withdrawal of the immigrant visa application filed by that alien;

(iii) The denial or withdrawal of the alien's application for adjustment of status to that of lawful permanent residence;

(iv) The V–1 spouse's divorce from the LPR becomes final; or

(v) The marriage of an alien in V–2 or V–3 status.

(2) *Dependents.* When a principal alien's V nonimmigrant status is terminated, the V nonimmigrant status of any alien listed as a V–3 dependent or who is seeking derivative benefits is also terminated.

(3) *Appeals.* If the denial of the immigrant visa petition is appealed, the alien's V nonimmigrant status does not terminate until 30 days after the administrative appeal is dismissed.

(4) *Violations of status.* Nothing in this section precludes the Service from immediately initiating removal proceedings for other violations of an alien's V nonimmigrant status.

(k) *Naturalization of the petitioner.* If the lawful permanent resident who filed the qualifying Form I–130 immigrant visa petition subsequently naturalizes, the V nonimmigrant status of the spouse and any children will terminate after his or her current period of admission ends. However, in such a case, the alien spouse or child will be considered an immediate relative of a U.S. citizen as defined in section 201(b) of the Act and will immediately be eligible to apply for adjustment of status and related employment authorization. If the V–1 spouse or V–2 child had already filed an application for adjustment of status by the time the LPR naturalized, a new application for adjustment will not be required.

(l) *Aliens in proceedings.* An alien who is already in immigration proceedings and believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

6. Section 245.2 is amended by adding a new paragraph (a)(4)(ii)(D), to read as follows:

§ 245.2 Application.

(a) * * *

(4) * * *

(ii) * * *

(D) The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful V status shall not be deemed an abandonment of the application if, upon returning to this country, the alien is admissible as a V nonimmigrant.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

7. The authority citation for part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

8–9. Section 248.1 is amended by adding a sentence at the end of paragraph (a) and by revising paragraph (b) introductory text to read as follows:

§ 248.1 Eligibility.

(a) * * * An alien defined by section 101(a)(15)(V) of the Act may be accorded nonimmigrant status in the United States by following the procedures set forth in § 214.15(f) of this chapter.

(b) * * * Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

10. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

11. Section 274a.12 is amended by:

a. Revising the last sentence in paragraph (a) introductory text;

b. Removing the ''or'' at the end of paragraph (a)(13);

c. Removing the period of the end of paragraph (a)(14) and adding ''; or'' in its place; and by

d. Adding paragraph (a)(15).

The revisions and additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* * * * Any alien who is within a class of aliens described in paragraphs (a)(3) through (a)(8) or (a)(10) through (a)(15) of this section, and who seeks to be employed in the United States, must apply to the Service for a document evidencing such employment.

* * * * *

(15) Any alien in V nonimmigrant status as defined in section 101(a)(15)(V) of the Act and 8 CFR 214.15. An employment authorization document issued under this paragraph will be valid for a period equal to the alien's period of authorized admission as a V nonimmigrant and, in any case, may not exceed 2 years;

* * * * *

PART 299—IMMIGRATION FORMS

12. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

13. Section 299.1 is amended in the table by adding Form ''I–539, Supplement A'', in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* *
I–539 Supplement A.	03–27–01	Filing Instructions for V nonimmigrant status.
* *	*	* *

14. Section 299.5 is amended in the table by adding Form ''I–539 Supplement A'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB Control No.
* *	* *	*
	I–539 Supplement A Filing Instructions for V nonimmigrant status.	1115–0237
* *	* *	*

Dated: August 28, 2001.

Larry D. Thompson,

Acting Attorney General.

[FR Doc. 01–22151 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522, 524, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 56 approved new animal drug applications (NADAs) and 3 approved abbreviated new animal drug applications (ANADAs) from Roche Vitamins, Inc., to Alpharma, Inc.

DATES: This rule is effective September 7, 2001.

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

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, has informed FDA that it has transferred ownership of, and all rights and interest in, the following approved NADAs and ANADAs to Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024:

NADA No.	Product Name
33–950	Sulfamerazine in Fish Grade
35–688	Aureo SP–250; Aureomix 500
35–805	Aureomix-S 700 Crumbles; Aureomix-S 700
36–361	Amprolium Plus Ethopabate/CTC® Sodium Sulfate
40–209	Rofenaid® 40
41–647	Aureomix-S 700–A
41–648	Aureomix-S 700–D
41–649	Aureomix-S 700–G
41–650	Aureomix-S 700–E
41–651	Aureomix-S 700–F
41–652	Aureomix-S 700–C–2
41–653	Aureomix-S 700–B
41–654	Aureomix-S 700–H
41–984	Rofenaid® Plus Roxarsone
46–920	Baciferm® 10, 25, 40, and 50 Type A Medicated Articles
48–486	Robenz® Type A Medicated Article
48–761	Aureomycin® Type A Medicated Article
49–287	Chlorachel–50
55–040	SF Mix 66
92–507	Robenz® With Aureomycin® 500
95–546	Robenz® Plus Roxarsone
96–298	Avatec® and Bovatec® Premixes
96–933	Robenz® Plus Zn Bacitracin
97–085	Robenz® Plus Bac MD
100–901	Pfichlor 100S Milk Replacer Type A Medicated Article
102–485	Avatec®/3–Nitro®
105–758	Zinc Bacitracin and Amprol HI–E®
107–996	Avatec®/Fortracin® Premix
112–661	Avatec®/Lincomix®/3–Nitro®
112–687	Avatec®/Flavomycin®/3–Nitro®
114–794	Baciferm®/Amprol HI–E® Premix
121–553	Coban®/Aureomycin®
123–154	Coban®/3–Nitro®–10/Baciferm® Premix
125–933	Romet®–30 (Sulfamerazine)
126–052	Avatec®/Baciferm®/3–Nitro®
128–686	Bio-Cox® Type A Medicated Article
131–894	Avatec®/Fortracin®/3–Nitro® Broiler Premix
132–447	Bio-Cox® Plus Roxarsone
134–185	Bio-Cox®/3–Nitro®/Flavomycin®
134–284	Bio-Cox®/Flavomycin®
135–321	Bio-Cox®/3–Nitro®/BMD®
135–746	Bio-Cox®/BMD®
136–484	Carb-O-Sep®/Baciferm®
137–536	Bio-Cox®/3–Nitro® plus Albac®
137–537	Bio-Cox®/Lincomix®
139–075	Cygro® Type A Medicated Article
139–190	Bio-Cox®/3–Nitro®/Baciferm®
139–235	Bio-Cox®/Baciferm®
140–579	Bovatec®/Terramycin®
140–581	Bio-Cox®/3–Nitro®/Lincomix®
140–859	Aureomycin®/Bio-Cox®
140–865	Monteban®/Baciferm®
140–867	Aureomycin®/Bio-Cox®/3–Nitro®
141–025	Cattlyst® Type A Medicated Article
141–109	Avatec®/Baciferm®
141–150	Avatec®/Stafac®
200–140	Aureozol® Type A Medicated Article
200–167	Aureozol® 500 Granular
200–242	Aureomycin®–50, 70, 80, 90, 100/BMD® 25, 30, 40, 50, 60, 75

Accordingly, the agency is amending the regulations in 21 CFR 558.58, 558.76, 558.78, 558.95, 558.120, 558.128, 558.140, 558.145, 558.155, 558.195, 558.305, 558.311, 558.340, 558.355, 558.363, 558.366, 558.515, 558.550, 558.575, 558.582, and 558.600 to reflect the transfer of ownership. Section 558.95 is also being amended to remove paragraph (d)(1)(x), an entry pertaining to NADA 112–687, which is redundant with § 558.311(e)(1)(ii). Other nonsubstantive changes are being made to remove incorrect drug labeler codes.

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

List of Subjects

21 CFR Parts 522 and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522, 524, and 558 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.575 [Amended]

2. Section 522.575 *Diazepam injection* is amended in paragraph (b) by removing ''000004'' and by adding in its place ''063238''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 524.520 [Amended]

4. Section 524.520 *Cuprimyxin cream* is amended in paragraph (b) by removing ''000004'' and by adding in its place ''063238''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.58 [Amended]

6. Section 558.58 *Amprolium and ethopabate* is amended in the table in paragraph (d)(1)(iii), under the ''Limitations'' column in the entries for ''Bacitracin 4 to 50'', ''Bacitracin 5 to 35 plus roxarsone 34 (0.00375%)'', and ''Bacitracin 10 to 50 plus roxarsone 15.4 to 45.4 (0.0017% to 0.005%)'' by removing ''Nos. 046573 and 063238'' and by adding in its place ''No. 046573''; and under the ''Sponsor'' column by removing ''063238'' and ''and 063238'' wherever they appear.

§ 558.76 [Amended]

7. Section 558.76 *Bacitracin methylene disalicylate* is amended in the table in paragraph (d)(1)(iv), under the ''Limitations'' column by removing ''Nos. 000004 and 046573'' and by adding in its place ''No. 046573''; and under the ''Sponsor'' column by removing ''000004 and 046573'' both times it appears and adding in its place ''046573''.

8. Section 558.78 is amended by revising paragraph (a)(1), by removing paragraph (a)(2), and by redesignating paragraph (a)(3) as paragraph (a)(2); in the table in paragraphs (d)(1)(i) and (d)(1)(ii) under the ''Sponsor'' column by removing ''063238''; and in paragraphs (d)(1)(v) and (d)(1)(vi) under the ''Sponsor'' column, and in paragraph (d)(2)(ii) by removing ''063238'' and by adding in its place ''046573'' to read as follows:

§ 558.78 Bacitracin zinc.

(a) * * *

(1) No. 046573: 10, 25, 40, and 50 grams per pound as in paragraph (d) of this section.

* * * * *

§ 558.95 [Amended]

9. Section 558.95 *Bambermycins* is amended by removing and reserving paragraph (d)(1)(x); and in paragraphs (d)(1)(xi)*(b)*, (d)(1)(xii)*(b)*, and (d)(1)(xiv)*(b)* by removing ''063238'' and by adding in its place ''046573''.

§ 558.120 [Amended]

10. Section 558.120 *Carbarsone (not U.S.P.)* is amended in paragraph (d)(1)(iii)*(b)* by removing ''Nos. 046573 and 063238'' and by adding in its place ''No. 046573''.

11. Section 558.128 is amended by revising paragraph (a); in the table in paragraph (d)(1) and in paragraph (d)(2) by removing ''00004'' or ''000004'' wherever they occur and by adding in their place ''046573''; in paragraph (d)(1)(i) in entry 1, and in paragraphs (d)(1)(iv), (d)(1)(vi), and (d)(1)(viii) under the ''Sponsor'' column by removing ''063238'' and by adding in its place ''046573''; in paragraph (d)(1)(i) in entry 2, and in paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(v), (d)(1)(vii), (d)(1)(x), and (d)(1)(xii) in entry 3, and in paragraphs (d)(1)(xiv), (d)(1)(xvi), and (d)(1)(xvii) under the ''Sponsor'' column by removing ''063238'' to read as follows:

§ 558.128 Chlortetracycline.

(a) *Approvals.* See sponsors in § 510.600(c) of this chapter for Type A medicated articles containing the following concentrations of either chlortetracycline calcium complex equivalent to chlortetracycline hydrochloride or, for products intended for use in milk replacer, chlortetracycline hydrochloride:

(1) Nos. 000069, 046573, and 053389: 50 to 100 grams per pound.

(2) No. 017519: 50 grams per pound.

* * * * *

§ 558.140 [Amended]

12. Section 558.140 *Chlortetracycline and sulfamethazine* is amended in paragraph (a) by removing ''063238'' and by adding in its place ''046573''.

§ 558.145 [Amended]

13. Section 558.145 *Chlortetracycline, procaine penicillin, and sulfamethazine* is amended in paragraph (a)(1) by removing ''and 063238'', and in paragraph (a)(2) by removing ''063238'' and by adding in its place ''046573''.

§ 558.155 [Amended]

14. Section 558.155 *Chlortetracycline, sulfathiazole, penicillin* is amended in paragraph (a)(1) by removing ''000004 and 000010'' and adding in its place ''Nos. 000010 and 046573'', and in paragraph (a)(2) by removing ''000004 and 000010'' and by adding in its place ''000010 and 046573''.

§ 558.195 [Amended]

15. Section 558.195 *Decoquinate* is amended in the table in paragraph (d) in the entry for ''Roxarsone 11 to 45 (0.0012–0.005 pct.) plus Bacitracin 12 to 50'' under the ''Limitations'' column by removing ''Nos. 011716, 046573, and 063238'' and by adding in its place ''No. 046573''.

§ 558.305 [Amended]

16. Section 558.305 *Laidlomycin propionate potassium* is amended in paragraph (a) by removing ''063238'' and by adding in its place ''046573''.

§ 558.311 [Amended]

17. Section 558.311 *Lasalocid* is amended in paragraphs (b) and (e) by removing ''000004'' or ''063238'' wherever they occur and by adding in their place ''046573''.

§ 558.340 [Amended]

18. Section 558.340 *Maduramicin ammonium* is amended in paragraph (a) by removing ''063238'' and by adding in its place ''046573''.

§ 558.355 [Amended]

19. Section 558.355 *Monensin* is amended in paragraphs (b)(8), (b)(9), (f)(1)(iv)*(b)*, and (f)(1)(v)*(b)* by removing ''063238'' and by adding in its place ''046573''; in paragraphs (f)(1)(xiv)*(b)* and (f)(1)(xvi)*(b)* by removing ''Nos. 046573 and 063238'' and by adding in its place ''No. 046573''; and in paragraph (f)(1)(xv)*(b)* by removing ''Nos. 063238 and 046573'' and by adding in its place ''No. 046573''.

§ 558.363 [Amended]

20. Section 558.363 *Narasin* is amended in paragraphs (a)(7) and (d)(1)(x)(B) by removing ''063238'' and by adding in its place ''046573''.

§ 558.366 [Amended]

21. Section 558.366 *Nicarbazin* is amended in the table in paragraph (c) in the entry for the combination of nicarbazin at 113.5 grams per ton and bacitracin zinc at 4 to 50 grams per ton by removing ''063238'' in the ''Limitations'' column and by adding in its place ''046573''.

§ 558.515 [Amended]

22. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (a) by removing ''063238'' and by adding in its place ''046573''; in the table in paragraph (d) in the entry for robenidine hydrochloride at 30 grams per ton as a single ingredient by removing ''063238'' in the ''Sponsor'' column and by adding in its place ''046573''; in the two entries for ''Bacitracin (as bacitracin zinc)'' by removing ''063238'' in the ''Sponsor'' column; and in the entry for ''Chlortetracycline 500'' by removing ''063238'' from the ''Sponsor'' column and by adding in its place ''046573''.

§ 558.550 [Amended]

23. Section 558.550 *Salinomycin* is amended in paragraph (a)(1) by removing ''063238'' and by adding in its place ''046573''; by removing paragraph (a)(3); in paragraph (d)(1)(xvii)(C) by removing ''000004'' and by adding in its place ''046573''; in paragraphs (d)(1) and (d)(3) by removing ''063238'' wherever it occurs and by adding in its place ''046573''; in paragraph (d)(1)(viii)*(c)* by removing ''(b)(1)(iv)*(c)*'' and by adding in its place ''(d)(1)(iv)*(c)*''; and in paragraph (d)(1)(xi)*(c)* by removing ''(b)(1)(x)*(c)*'' and by adding in its place ''(d)(1)(x)*(c)*''.

§ 558.575 [Amended]

24. Section 558.575 *Sulfadimethoxine, ormetoprim* is amended in paragraphs (a)(1) and (a)(2) by removing ''000004'' and by adding in its place ''046573''.

§ 558.582 [Amended]

25. Section 558.582 *Sulfamerazine* is amended in paragraph (a) by removing ''063238'' and by adding in its place ''046573''.

§ 558.600 [Amended]

26. Section 558.600 *Tiamulin* is amended in paragraph (c)(4)(ii) by removing ''046573, 053389, and 063238'' and by adding in its place ''046573 and 053389''.

Dated: August 24, 2001.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–22470 Filed 9–6–01; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 231

RIN 0790–AG74

Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule reflects the transition of operational responsibilities for banks and credit unions from the Office of the Under Secretary of Defense (Comptroller) to the Defense Finance and Accounting Service; to address changes in financial-related technology and the vehicles through which financial services are delivered (i.e., in-store banking, electronic banking (ATMs)); and incorporates the procedural guidance contained in other DoD documents.

DATES: This rule is effective June 1, 2001.

FOR FURTHER INFORMATION CONTACT: T. Summers, 703–602–0299.

SUPPLEMENTARY INFORMATION:

Background

Stateside military banking began in 1941 when the Department realized that financial services were urgently needed by military and civilian personnel on domestic installations. To address this need, the Department permitted installation commanders to negotiate with nearby local banks to establish branches on their installation. Today, there are over 230 domestic installations that have either a bank or credit union or both. To ensure consistency between installations in the level, cost and types of financial services offered the Department established regulations in parts 230 and 231 to govern the operation and oversight of these institutions. These regulations limit the number of financial institutions that may operate on an installation to one bank and one credit union (with a grandfather provision). The regulations require full and open competition for a full spectrum of banking services (to include electronic banking services). Policy guidance relating to the military banking program, by regulation, is the responsibility of the Under Secretary of Defense (Comptroller) while operational guidance rests with the Defense Finance and Accounting Service (DFAS). To ensure financial services are available on our overseas installations, the Department operates the overseas military banking program. The DFAS has been assigned the program office responsibilities for this effort, which is provided under contract by a domestic financial institution. In FY 2000, the overseas military banking program contractor operated 110 banking offices and over 250 automated teller machines in 10 foreign countries. Overseas military banks support DoD personnel and their families, disbursing officers, appropriated fund activities (such as the Defense Commissary Agency) and nonappropriated fund activities (such as the Army and Air Force Exchange Service).

Comments, and Changes to, the Proposed Rule

The Department of Defense published a proposed rule on August 11, 1999 (64 FR 43858). Over 240 comments from 55 entities were received in response to the publication of the proposed rule. The majority of these comments focused on three areas in the proposed rule: (1) Prohibiting the assessment of automated teller machine (ATM) surcharging; (2) the establishment of a ceiling for other fees and charges; and (3) monthly financial reporting. The first two were addressed in 32 CFR part 230. The comments and the disposition of those comments on monthly financial reporting are specifically addressed below. The remainder of the comments were either administrative in nature or suggested that additional clarification was needed in certain areas. None of these resulted in any significant changes to the proposed rule.

The previously published proposed rule (§ 231.4(g)(5)) would have required that the on-base financial institution include in its operating agreement with the installation commander a provision that it will furnish copies of its monthly financial reports and other local publications to the installation commander (or designee). Prior to the consolidation of the guidance for banks and credit unions, the provision for monthly reporting was only included in the credit union guidance with periodic financial reporting required for banks only in certain situations. Therefore, most of the comments received were objections from on-base banks. The comments reflected that the banking industry is highly regulated and quarterly reports are generated as required by Federal and State regulators. Thus, they did not see a need to require the monthly production of information that is neither requested nor needed. It was suggested that when additional information is needed, it would be more appropriate for it to be provided on an ''as requested'' basis. There may be occasions where the installation commander will need financial information that is unobtainable from sources other than the on-base financial institution. For example, there may be a need for financial information by the installation commander to accommodate an evaluation of a potential expansion of existing on-base financial services or information may be required to assist in the development of a solicitation when the on-base financial institution has given notice of its intent to terminate operations on the installation. Based on the comments received, the section has been revised to require an on-base financial institution furnish copies of its financial reports and other local publications only on an ''as needed'' basis in response to a formal request from the installation commander (or designee).

Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 231 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and address areas such as the solicitation for such services, the types of services and the logistics support provided.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that the rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been certified that the rule does not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 231

Armed forces, Banks, Banking, Credit unions, Federal buildings and facilities.

Accordingly, 32 CFR part 231 is revised to read as follows:

PART 231—PROCEDURES GOVERNING BANKS, CREDIT UNIONS AND OTHER FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Subpart A—Guidelines 231.1 Overview.

Subpart B—DoD Directive 1000.11

Subpart C—Guidelines for Applications of the Privacy Act to Financial Institution Operations

Authority: 10 U.S.C. 136.

Subpart A—Guidelines

§ 231.1 Overview.

(a) *Purpose.* This part implements DoD Directive 1000.11 (32 CFR part 230) [1] and prescribes guidance and procedures governing the establishment, support, operation, and termination of banks and credit unions operating on DoD installations worldwide, to include military banking facilities (MBFs). In addition, this part provides guidance intended to ensure that arrangements for the provision of services by financial institutions are consistent among DoD Components, and that financial institutions operating on DoD installations provide, and are provided, support consistent with the guidance and procedures stated herein.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff and the supporting Joint Agencies, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, the Uniformed Services University of the Health Sciences (USUHS), all DoD nonappropriated fund instrumentalities including the Military Exchange Services and morale, welfare and recreation (MWR) activities, and all other organizational entities within the Department of Defense.

[1] Copies may be obtained via Internet at *http://www.dtic.whs/directives.*

§ 231.2 Policy.

The policy pertaining to financial institutions operating on DoD installations is contained in DoD Directive 1000.11 (32 CFR part 230) and in § 231.4.

§ 231.3 Responsibilities.

(a) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop and monitor policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to this part.

(b) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)) shall monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services that affect the morale and welfare of DoD personnel.

(d) The Director, Defense Finance and Accounting Service (DFAS) shall:

(1) Develop procedures governing banks and credit unions on DoD installations for promulgation in this part.

(2) For domestic DoD installations, coordinate with the Secretaries of the Military Departments (or designees) on requests from subordinate installation commanders to establish or terminate banking offices or on-base credit unions. For overseas DoD installations, coordinate with the Secretary of the Military Department concerned (or designee) on requests from subordinate installation commanders to establish or discontinue the provision of financial services from the on-base financial institution under contract with the Department of Defense or to establish or terminate banking offices or credit unions located on DoD installations.

(3) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas military banking facilities (MBFs) and specify the charges or fees, or the basis for these, to be levied on users of these services.

(4) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and

overseas MBFs as depositaries and financial agents of the U.S. Government.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation (FAR) for acquiring banking services required at overseas DoD installations.

(6) Serve as principal liaison with banking institutions having offices on overseas DoD installations. In this capacity, monitor MBF managerial and operational policies, procedures, and operating results and take action as appropriate.

(7) As necessary, assist in the formation of government-to-government agreements for the provision of banking services on overseas DoD installations, in accordance with DoD Directive 5530.3 [2].

(8) Provide procedural guidance to DoD Components, as required.

(9) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies toward respective memberships and aid in resolving mutual concerns affecting the provision of financial services.

(10) Coordinate with the USD(P&R), through the USD(C), on all aspects of morale and welfare and with the USD(AT&L), through the USD(C), on all aspects of logistic support for on-base financial institutions.

(11) Monitor industry trends, conduct studies and surveys, and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinate as necessary with DoD Components, financial institutions, and trade associations as appropriate.

(12) Maintain liaison, as appropriate, with financial institution regulatory agencies at federal and state levels.

(13) Ensure that recommendations of the Combatant Commands are considered before processing requests for overseas banking and credit union service or related actions.

(14) Maintain a listing of all geographic franchises assigned to credit unions serving DoD overseas installations.

(e) Secretaries of the Military Departments (or designees) shall:

(1) For domestic DoD installations, take action on requests from subordinate installation commanders to establish or terminate financial institution operations. For overseas DoD installations, take action in accordance with guidance contained herein on requests from subordinate installation commanders to establish or discontinue the provision of financial services from the DoD contracted banking institution, or to establish or terminate other financial institutions located on DoD installations.

(2) Provide for liaison to those financial institutions that operate banking offices on respective domestic DoD installations.

(3) Oversee the use of banking offices and credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11 (32 CFR part 230).

(4) Evaluate the services provided and related charges and fees by respective on-base banking offices and credit unions to ensure that they fulfill the requirements upon which the establishment and retention of those services were justified.

(5) Monitor practices and procedures of respective banking offices and credit unions to ensure that the welfare and interests of DoD personnel as consumers are protected.

(6) Assist on-base banking offices and credit unions to develop and expand necessary services for DoD personnel consistent with this part.

(7) Encourage the conversion of existing domestic MBFs on respective installations to independent or branch bank status where feasible.

(8) Provide logistical support to overseas MBFs under terms and conditions identified in this part as well as with the applicable terms of DoD contracts with financial institutions responsible for the operations of overseas MBFs.

(9) Refer matters requiring policy decisions or proposed changes to this part or DoD Directive 1000.11 (32 CFR part 230) to the USD(C) through the Director, DFAS.

(10) Monitor and encourage the use of financial institutions on DoD installations to accomplish the following ends.

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of on-base activities.

(ii) Assist DoD personnel in managing their personal finances through participation in programs such as direct deposit and regular savings plans, including U.S. savings bonds. The use of on-base financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(11) Encourage and assist duly chartered financial institutions on domestic DoD installations to provide complete financial services to include, without charge, basic financial education and counseling services. Financial education and counseling services refer to basic personal and family finances such as budgeting, checkbook balancing and account reconciliation, benefits of savings, prudent use of credit, how to start a savings program, how to shop and apply for credit, and the consequences of excessive credit.

(12) Establish liaison, as appropriate, with federal and state regulatory agencies and financial institution trade associations, leagues, and councils.

(13) Make military locator services available to on-base financial institutions in accordance with the Privacy Act guidelines in subpart B of this part.

(14) Permit DoD personnel to serve on volunteer boards or committees of on-base financial institutions, without compensation, when neither a conflict of duty nor a conflict of interest is involved, in accordance with DoD Directive 5500.7.[3]

(15) Allow DoD personnel to attend conferences and meetings that bring together representatives of on-base financial institutions, when neither a conflict of duty nor a conflict of interest is involved, in accordance with DoD Directive 1327.5,[4] subchapter 630 of the DoD Civilian Personnel Manual (DoD 1400.25–M [5]), and Comptroller General Decision B–212457.

(f) The Commanders of the Combatant Commands (or designees) shall:

(1) Ensure the appropriate coordination of the following types of requests affecting financial institutions overseas.

(i) Establish financial institutions in countries not presently served. Such requests will include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate any or all financial institutions on DoD installations within a foreign country. Such requests will include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations within the command area. Personnel assigned to security assistance positions will not perform

[2] See footnote 1 to § 231.1(a).

[3] See footnote 1 to § 231.1(a).

[4] See footnote 1 to § 231.1(a).

[5] See footnote 1 to § 231.1(a).

this function without the prior approval of the Director, Defense Security Cooperation Agency (DSCA).

(g) The Commanders of Major Commands and subordinate installation commanders shall:

(1) Monitor the banking and credit union program within their commands.

(2) Coordinate requests to establish or construct bank and credit union offices or terminate logistical support as specified in this part to banks and credit unions within their commands. Personnel assigned to overseas security assistance positions will not monitor, coordinate, or assist in military banking operations without the prior approval of the DSCA.

(3) Assign, as appropriate, responsibility for paragraphs (g)(1) and (g)(2) of this section, to comptroller or resource management personnel.

(4) Cooperate with financial institution associations, leagues, and councils.

(5) Recognize the right of all DoD personnel to organize and join credit unions and promote the credit union movement in DoD worldwide.

(6) Permit DoD personnel to serve on volunteer boards or committees of on-base financial institutions, without compensation, when neither a conflict of duty nor a conflict of interest is involved, in accordance with DoD Directive 5500.7.

(7) Allow DoD personnel to attend conferences and meetings that bring together representatives of on-base financial institutions, when neither a conflict of duty nor a conflict of interest is involved, in accordance with DoD Directive 1327.5, Subchapter 630 of the DoD Civilian Personnel Manual (DoD 1400.25–M), and Comptroller General Decision B–212457.

(8) Seek the provision of financial services only from existing on-base financial institutions, proposing alternatives only where on-base financial institutions fail to respond favorably to a valid requirement.

§ 231.4 General provisions.

(a) *Security.* The installation commander (or designee) and officials of the on-base financial institutions shall work with the installation security authorities to establish an understanding as to each entity's responsibilities. The on-base financial institutions are encouraged to establish an ongoing relationship with installation security authorities on all matters of asset protection.

(1) A written agreement shall be established outlining the security procedures that the financial institution will follow and the role that installation security authorities will play with regard to alarms, movement of cash, and procedures to be followed in response to criminal activity (e.g., armed robbery).

(2) Cash and other assets in on-base banking offices and credit unions are the property of those financial institutions. Maintenance of alarms and use of armored cars is the sole responsibility of the on-base financial institution. The on-base financial institution is also solely responsible for the guarding or escorting of cash unless the installation commander determines that providing such services is desirable or necessary.

(b) *Central locator services.* Military locator services shall be provided per the guidelines in subpart B of this part.

(1) When appropriate, installations will process financial institution requests for central locator service to obtain military addresses of active duty personnel. This service will be used to locate persons for settling accounts, and recovering funds on checks that did not clear or loans that are delinquent or in default (see DoD Directive 1344.9 [6]). If delinquent loans or dishonored checks are not recouped within 48 hours, financial institutions operating on DoD installations may bring this information to the attention of the local commander, bank liaison officer, or other designee for assistance in effecting restitution of the amount due, if not otherwise prohibited by law. The financial institution will pay the appropriate fee for each request to the respective Military Department.

(2) The DoD Components shall assist financial institutions to locate DoD personnel whose whereabouts cannot be locally determined. The request should be on the financial institution's letterhead, include the Service member's name and social security number, and cite the cognizant Military Service regulation that authorizes the use of locator services. If a financial institution needs immediate service, the cognizant institution official should contact the bank or credit union liaison officer.

(i) For addresses of Department of the Army active, retired, separated and civilian personnel, financial institutions may telephone (703) 325–3732 or write to: Department of the Army Worldwide Locator, U.S. Army Enlisted Record and Evaluation Center, 8899 E. 56th Street, Indianapolis, IN 46249–5301.

(ii) For addresses of Navy active, retired, separated and civilian personnel, financial institutions may telephone (901) 874–3388 or write to: Navy Personnel Command, PERS–312F, 5720 Integrity Drive, Millington, TN 38055–3120.

(iii) For addresses of Department of the Air Force active, retired, separated and civilian personnel, financial institutions may telephone (210) 565–2660 or write to: Air Force Personnel Center, MSIMDL Suite 50, 550 C Street West, Randolph AFB, TX 78150–4752.

(iv) For addresses of United States Marine Corps active, retired, separated and civilian personnel, financial institutions may telephone (703) 784–3942 or write to:

Active

U.S. Marine Corps—CMC, HQ MC MMS B 10, 2008 Elliot Road, Room 201, Quantico, VA 22134–5030.

Retired-Separated

Q U.S. MMRS–6, 280 Russell Road, Quantico, VA 22134–5105.

Civilian

Commanding General, 15303 Andrew Road, Kansas City, MO 64147–1207.

(c) *Advertising.*

(1) An on-base financial institution may use the unofficial section of that installation's daily bulletin, provided space is available, to inform DoD personnel of financial services and announce seminars, consumer information programs, and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

(2) An on-base financial institution may use installation bulletin boards, newsletters or web pages to post general information that complements the installation's financial counseling programs and promotes financial responsibility and thrift. Message center services may distribute a reasonable number of announcements to units for use on bulletin boards so long as this does not impose an unreasonable workload.

(3) An on-base financial institution may include an insert in the installation's newcomers package (or equivalent). This insert should benefit newcomers by identifying the financial services that are available on the installation.

(4) DoD Directive 5120.20 [7] prevents use of the Armed Forces Radio and Television Service to promote a specific financial institution.

(5) Off-base financial institutions are not permitted to distribute competitive

[6] See footnote 1 to § 231.1(a).

[7] See footnote 1 to § 231.1(a).

literature or forms on the installation. These institutions, however, may use commercial advertising, mailings or telecommunications to reach their customers.

(6) Advertising in government-funded (official) installation papers is not permitted with the exception of insert advertising in the *Stars and Stripes* overseas. Installation newspapers funded by advertisers are not official publications and, thus, may include advertising paid for by any financial institution.

(7) Installation activities, including Military Exchange Services and concessionaire outlets, shall not permit the distribution of literature from off-base financial institutions if there is an on-base financial institution. This does not prevent the Military Exchange Services from distributing literature on affinity credit card services that those Military Exchange Services may acquire centrally through competitive solicitation.

(d) *Automated teller machine (ATM) service.* On-base financial institutions are encouraged to install ATMs at those installation(s) on which they are located.

(1) Financial institutions that propose to install ATMs on DoD installations shall bear the cost of ATM installation, maintenance and operation. The installation commander may enter into an agreement with the on-base financial institution wherein the installation may acquire and provide ATMs to on-base financial institutions under certain circumstances, such as when it is advantageous to the government to have one or more ATMs available for use but the acquisition cost to the financial institution is prohibitive. No ATM shall be purchased by an installation unless approved by the Secretary of the Military Department concerned (or designee). In all such cases, installation costs and all logistic support shall be borne by the financial institution.

(2) ATM approval authority is as shown:

(i) The installation commander has approval authority when an on-base financial institution wishes to place an ATM on the installation. This approval should be reflected as an amendment to the operating agreement.

(ii) Where there is no on-base financial institution, follow the solicitation procedures to obtain financial services set forth in §§ 231.5(c) and 231.7(b).

(3) The availability of ATM service shall not preclude the later establishment of a banking office should conditions change on an installation.

(4) Proposals by an installation commander to install ATMs on domestic installations from other than on-base financial institutions, including the Military Exchange Services, morale, welfare and recreational activities and/or other nonappropriated fund instrumentalities, shall be considered only when:

(i) ATM service is unavailable or existing service is inadequate, and

(ii) The on-base financial institution(s) either declines to provide the service, fails to improve existing service so that it is adequate, or does not formally respond to the request for such service within 30 days of the date of the request. Any ATM service from other than on-base financial institutions is considered an exception to policy. The procedures to establish an on-base financial institution set forth in §§ 231.5(c) and 231.7(b) shall be followed when soliciting for such ATM services. Proposals offering shared-access ATMs (e.g., ATMs operated by two or more financial institutions where their accountholders are not assessed any or all fees applicable to nonaccountholders) shall receive preference.

(5) ATM service from foreign banking institutions may be authorized on overseas installations with or without MBFs operated under contract where the installation or community commander determines that a bonafide need exists to support local national hires. On installations with MBFs operated under contract, the MBFs shall be the primary source of the ATM service except when a determination has been made by the cognizant contract program office that providing the service is either not cost effective or precluded by pertinent status of forces agreements, other intergovernmental agreements or host-country law. In those instances where ATM service from foreign banking institutions is authorized and provided by other than the on-base financial institution, ATM connectivity shall be limited to host country networks and the ATMs shall dispense only local currency (no U.S. dollars). The operating agreement covering ATM service shall be negotiated by the installation or community commander and submitted for approval by the appropriate Combatant Commander (or designee) prior to its execution. A copy of the operating agreement will be forwarded through DoD Component channels to the DFAS.

(e) *Domestic and international treasury general accounts.* In cases where authorization will be required for the on-base banking office or credit union to act as a Treasury General Account (TGA) domestic depositary (or, on overseas installations, an International Treasury General Account (ITGA) depository), the financial institution shall satisfy the risk management standard established by the Secretary of the Treasury. Local operating funds may be used if the on-base financial institution requests reimbursement for costs incurred. On-base financial institutions shall accept deposits for credit to the TGA (or ITGA) when so authorized.

(f) *Staffing.* (1) On-base financial institutions shall be staffed adequately (i.e., commensurate with industry standards for similar numbers of accountholders and financial services rendered). Staffing at overseas MBFs operated under DoD contract shall be maintained within negotiated ceilings.

(2) All staffing shall comply fully with applicable equal employment opportunity laws and with the spirit of DoD equal employment opportunity policies as set forth in DoD Directive 1440.1.[8]

(3) DoD personnel, excluding military retirees and their dependents, may not serve as directors of domestic or foreign banking institutions operating banking offices on those DoD installations where they currently are assigned. This does not preclude a member of a Reserve Component, who has been serving as a director of a domestic or foreign banking institution operating a banking office on a DoD installation, from retaining his or her directorship if called to active duty.

(4) DoD personnel may not be detailed to duty with an on-base financial institution located on a DoD installation. Off-duty personnel, however, may be employed by an on-base financial institution subject to approval by the installation commander (or designee). Such employment must not interfere with the performance of the individual's official duties and responsibilities.

(g) *Departure clearance.* The installation commander establishes the clearance policy for all DoD personnel leaving the installation. The on-base financial institutions shall be included as places requiring clearance. The purpose of a clearance is to report change of address, reaffirm allotments or outstanding debts, and receive financial counseling, if desired or appropriate. Clearance may not be denied in order to collect debts or resolve disputes with financial institution management.

(h) *Financial education.* (1) Officials of on-base financial institutions shall be

[8] See footnote 1 to § 231.1(a).

invited to take part in seminars to educate personnel on personal financial management and financial services. Financial institutions shall be encouraged to provide financial education and counseling services as an integral part of their financial service offerings. Officials of on-base financial institutions shall submit advance briefing texts for approval by the installation commander to ensure that the program is not used to promote services of a specific financial institution.

(2) DoD personnel who tender uncollectable checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and adversely affect the public image of all government personnel. For uniformed personnel, military financial counselors and legal advisors shall recommend workable repayment plans that avoid further endangering credit ratings and counsel affected personnel to protect their credit standing and career. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and difficulties in obtaining future credit at reasonable rates and terms and shall recommend its use only when no other alternative will alleviate the situation.

(i) *Operating agreements.* (1) Before operations of an on-base banking office or credit union begin, a written operating agreement (Appendix C of this part) and the appropriate real estate outgrant (i.e., a lease, permit or license issued as identified in §§ 231.5(e), 231.5(f), 231.5(g), 231.7(d), 231.7(e) and 231.7(f) shall be negotiated directly between the installation commander and officials of the designated financial institution. Thereafter, the operating agreement shall be jointly reviewed by the installation commander and the financial institution at least once every 5 years. The operating agreement shall define the basic relationship between the on-base financial institution and the installation commander and identify mutual support activities such as hours of operation, service fees and security provided. One copy of the agreement shall be sent through command channels to the Secretary of the Military Department concerned (or designee). A copy of the agreement shall be maintained by the installation commander and the banking office or on-base credit union. At a minimum, the agreement shall include the following provisions:

(i) Identification of services to be rendered and the conditions for service. Full financial services shall be provided where feasible. Agreements, however, may not restrict either entity's right to renegotiate services and fees.

(ii) Agreement by both parties that they will comply with this part and DoD Directive 1000.11 (32 CFR part 230).

(iii) Agreement by the on-base financial institution that it will furnish copies of its financial reports and other local publications on an ''as needed'' basis in response to a formal request from the installation commander (or designee).

(iv) Agreement that the on-base financial institution will indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the U.S. Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of the premises caused in whole or in part by agents or employees of the on-base financial institution.

(v) Agreement that neither the Department of Defense nor its representatives shall be responsible or liable for the financial operation of the on-base financial institution or for any loss (including criminal losses), expense, or claim for damages arising from operations.

(vi) Agreement by the on-base financial institution (or any successor) that it will provide no less than 180 days advance written notice to the installation commander before ceasing operations.

(vii) Specification of the security services to be provided for guarding cash shipments, at times of unusual risk to the financial institution and to avoid excessive insurance costs charged to that institution.

(viii) Statement that the physical security for cash and negotiable items will be in a manner consistent with the requirements of the on-base financial institution's insurer. A copy of those requirements will be provided to the installation commander on request.

(ix) Statement that the financial institution, whenever possible, will accommodate local command requests for lectures and printed materials for consumer credit education programs. Officials invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(x) Agreement that the financial institution will reimburse the installation for the provision of logistical support (such as custodial, janitorial, and other services provided by the government) at rates set forth in the lease or agreement between the installation and the financial institution.

(xi) Statement that on-base financial institution operations shall be terminated, when required, under provisions specified in this part.

(2) Approved expansion of services will be documented as an amendment to the existing operating agreement between the installation commander and the on-base financial institution. The amendment to the operating agreement and any required lease (to include a change to an existing lease) shall be in place prior to the initiation of new financial services or offices.

(j) *Installation financial services.* (1) Retail banking operations shall not be performed by any DoD Component or nonappropriated fund instrumentality including the Military Exchange Services and morale, welfare and recreation (MWR) activities or any other organizational entity within the Department of Defense.

(2) Financial services provided on DoD installations will be as uniform as possible for all personnel. As separately negotiated, or based on a fee schedule, custodians of nonappropriated funds shall compensate on-base financial institutions for services received. Compensation may be made with compensating balances or paying fees based on the services provided or a combination of these payment mechanisms. Fees shall not exceed the charge customary for the financial institution less an offsetting credit on balances maintained. Banking offices shall classify nonappropriated fund accounts as commercial accounts.

(3) At a minimum, banking offices shall provide the same services to individuals and nonappropriated fund instrumentalities as are available in the surrounding geographic area.

(4) On-base financial institutions may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Operating hours shall be set, in consultation with the bank or credit union liaison officer, to meet the needs of all concerned. ATMs may be used to expand financial services and operating hours.

(5) DoD personnel may use their allotment of pay privileges to establish sound credit and savings practices through on-base financial institutions.

(i) The on-base financial institution shall credit customer accounts not later than the deposit date of the allotment check or electronic funds transfer.

(ii) The initiation of an allotment is voluntary (See Volume 7a, Chapter 42, Section 4202 of The DoD Financial Management Regulation (7200.14–R)). Thus, DoD personnel generally cannot be required to initiate an allotment for the repayment of a loan. Allotments voluntarily established by DoD personnel for the purpose of repaying a

loan or otherwise providing funds to an on-base financial institution shall continue in effect at the option of the allotter.

(6) In accordance with sound lending practice, policies on loans to individuals are expected to be as liberal as feasible while remaining consistent with the overall interests of the on-base financial institution. On-base financial institutions shall conform to the Standards of Fairness principles before executing loan or credit agreements. See DoD Directive 1344.9.

(7) On-base financial institutions shall make basic financial education and counseling services available without charge to individuals seeking these services. Financial education and counseling services refer to basic personal and family finances such as budgeting, checkbook balancing and account reconciliation, benefits of savings, prudent use of credit, how to start a savings program, how to shop and apply for credit, and the consequences of excessive credit. DoD personnel in junior enlisted or civilian grades, or newly married couples who apply for loans, shall be given special attention and counseling.

(8) On-base financial institutions must strive to provide the best service to all customers. On-base financial institutions that evidence a policy of discrimination in their services are in violation of this part. In resolving complaints of discrimination, use the procedures specified in § 231.5(h)(8).

(9) All correspondence regarding on-base financial institutions, and questions concerning their operation that cannot be resolved locally, shall be referred through command channels to the Secretary of the Military Department concerned (or designee) for consideration.

§ 231.5 Procedures—domestic banks.

(a) *General policy.* Given their role in promoting morale and welfare, on-base banks shall be recognized and assisted by DoD Components at all levels.

(b) *Establishment.* (1) The following information shall be included in the installation commander's request to the Secretary of the Military Department concerned (or designee) for establishment of banking offices:

(i) The approximate number of DoD personnel at the installation, and other persons who may be authorized to use the banking office.

(ii) The distance between the installation and the financial institutions in the vicinity, and the names of those institutions.

(iii) Available transportation between the installation and the financial institutions listed in paragraph (b)(1)(ii) of this section.

(iv) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(v) The name and location of the depositary used to make official deposits for credit to the TGA.

(vi) A list of organizational and nonappropriated fund accounts, the name and location of the financial institutions where deposited, and the average daily activity and balance of each account.

(vii) A written description and photographs of the space proposed for banking office use.

(viii) A statement listing the requirements of the proposed banking office for safes and a vault, alarm systems, and surveillance equipment, when necessary.

(ix) Reasons for use of space controlled by the General Services Administration (GSA). All the GSA assigned space, whether leased space or federal office building space, is reimbursable to the GSA at the standard level user charge. As such, space occupied by a banking office to serve military needs will be assigned and charged by the GSA.

(x) Any other information pertinent to the establishment of a banking office.

(2) The Secretary of the Military Departments (or designee) shall:

(i) Review each request for the establishment of banking offices.

(ii) Conduct a solicitation for the services when warranted.

(iii) Approve proposals for banking offices.

(iv) Notify the selected financial institution either directly or through the installation commander. The selected banking institution will, in turn, obtain operating authority from their regulating agencies.

(v) Forward proposals to establish TGAs to the DFAS for subsequent forwarding to the Fiscal Assistant Secretary of the Treasury in accordance with Volume 5, Chapter 5, paragraph 050102 of The DoD Financial Management Regulation (7000.14–R).

(c) *Solicitations.* The Secretary of the Military Department concerned (or designee), or the installation commander with advice from the cognizant Secretary of the Military Department (or designee), shall conduct solicitations to include pre-proposal conferences for on-base banking. Subject to the criteria for selection outlined in paragraph (c)(4) of this section the preferred sources of on-base financial services at domestic installations are federally-insured, state-chartered or federally-insured, federally-chartered banking institutions operating in the local area. The guidance at paragraph (c)(1) of this section addresses distribution of the solicitation only and does not preclude any federally-insured, state-chartered or federally-insured, federally-chartered banking institution from responding at any stage (from local distribution in paragraph (c)(1)(i) of this section to publication in the *Commerce Business Daily* and financial institution trade journals as outlined in paragraph (c)(1)(iii) of this section of the solicitation process. No commitment may be made to any banking institution regarding its proposal until a designation is made by the appropriate regulatory agency.

(1) Solicitations for banking services shall be accomplished in the following order:

(i) Solicitation letters will be sent to local banking institutions and a solicitation announcement will be published in the local newspaper(s) and forwarded to financial institution associations.

(ii) If the Secretary of the Military Department concerned (or designee) or, where delegated, the installation commander, determines that the geographic scope of the solicitation needs to be expanded, a prospectus will be forwarded to financial institutions in a larger geographic area, as well as financial institution associations and regulatory authorities in the state where the installation is located.

(iii) If the Secretary of the Military Department concerned (or designee) or, where delegated, the installation commander, determines that the geographic scope of the solicitation needs to be expanded further, the prospectus will be published in the Commerce Business Daily and financial institution trade journals.

(2) For solicitations conducted at the installation level, the installation commander shall review proposals to establish banking offices, select the banking institution making the best offer and forward a recommendation to the Secretary of the Military Department concerned (or designee) for final approval.

(3) Banking institutions shall not be coerced when banking arrangements are under consideration or after banking offices are established. If otherwise proper, this prohibition does not preclude:

(i) Discussions with banking institutions prior to submitting a proposal for a new banking office.

(ii) Helping banking offices extend their operations in support of an installation requirement.

(iii) Discussions with banking institutions to improve services or to create savings for the banking institution or DoD personnel.

(iv) Seeking proposals for banking service as directed by the Secretary of the Military Department concerned (or designee).

(v) Negotiations preparatory to signing a banking agreement.

(4) When soliciting for banking services, proposals shall be evaluated on specific factors identified in the solicitation. These factors, at a minimum, shall be predicated on the services to be provided as outlined in appendix A, paragraph 3, of this part, the financial institution's schedule of service fees and charges, and the extent of logistical support required. Prior to issuance of the solicitation, the preparing office shall identify (for internal use during the subsequent evaluation period) the weights to be applied to the factors reflected in the solicitation. Proposals shall be evaluated and ultimate selection made based upon the factors and weights developed for the solicitation.

(5) The Secretary of the Military Department concerned (or designee), or the installation commander with advice from the cognizant Secretary of the Military Department (or designee), shall make the selection of the banking institution based on the provisions outlined in this section.

(d) *Terminations.* (1) Requests for termination of financial services shall be approved by the installation commander, substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The termination of banking office operations shall be initiated by the installation commander only under one of the following conditions:

(i) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating or substantially reducing the requirement for financial services.

(ii) Active military operations prevent continuation of on-base financial services.

(iii) Performance of the banking office in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the operating agreements or the procedures prescribed herein.

(iv) When merger, acquisition, change of control or other action results in violation of the terms and conditions of the existing operating agreement, the Secretary of the Military Department (or designee) shall terminate the operating agreement with the existing banking institution. When the merger, acquisition, change of control or other action does not result in violation of the terms and conditions of the existing operating agreement, the Secretary of the Military Department (or designee) shall initiate a novation action of the operating agreement identifying the change in control.

(2) The installation commander shall forward requests for termination to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate all termination actions with the USD(C), through the Director, DFAS, before notification to the appropriate regulatory agency. Subsequent to this coordination process:

(i) The Secretary of the Military Department (or designee) shall inform the regulatory agency of the action.

(ii) The installation commander shall revoke the authority of the financial institution to operate. The lease will be terminated.

(3) Any banking office that intends to terminate its operations should notify the installation commander at least 180 days before the closing date. This notification should precede any public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the banking office to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with the guidance prescribed herein.

(e) *Use of space, logistical support, and military real property for domestic banks.*—(1) *Lease Terms.* (i) The consideration for a lease shall be determined by appraisal of fair market rental value in accordance with 10 U.S.C. 2667. Periodic reappraisals shall be based upon the fair market rental value exclusive of the improvements made by the banks.

(ii) The term of the lease shall not exceed 5 years except where the banking institution uses its own funds to improve existing government space as outlined in paragraph (e)(5) of this section. If space occupied is assigned by the GSA, charges to financial institutions for space and services shall be at the GSA standard level user rate.

(iii) Leases shall include the following provisions:

(A) The government has the right to terminate the lease due to national emergency; installation inactivation, closing, or other disposal action; or default by the lessee.

(B) The lessee shall provide written notice 180 days prior to voluntarily terminating the lease.

(C) Upon a lease termination, the government has the option to cause the title of all structures and other improvements to be conveyed to the United States without reimbursement, or require the lessee to remove the improvements and restore the land to its original condition.

(2) *Logistical support.* (i) The banking office shall be housed in a building accessible to DoD personnel on the installation and in a location permitting reasonable security.

(ii) Banking institutions shall perform all maintenance, repair, improvements, alterations, and construction on the banking premises.

(iii) Banking institutions shall pay for all utilities (i.e., electricity, natural gas or fuel oil, water and sewage), heating and air conditioning, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal) at rates set forth in the lease, operating agreement or other written agreement between the installation and the banking institution.

(3) Leases executed before the issuance of this part may not be altered solely as a result of the provisions of this part unless a lessee specifically requests a renegotiation under these provisions. No lease may be negotiated or renegotiated, nor may any rights be waived or surrendered without compensation to the government.

(4) When a banking institution participates in the construction of a shopping mall complex the lease shall cover only land where the banking office physically is located.

(5) When a banking institution uses its own funds to improve existing government space, leases, for a period not to exceed 25 years subject to periodic review every 5 years to assess changes in fair market value, may be negotiated for a period commensurate with the appraised value of the leasehold improvements divided by the annual lease fee.

(f) *Land leases.* (1) A lease for construction of a building to house a banking office shall be at the appraised fair market rental value. Charges shall apply for the term of the lease not to exceed 25 years, subject to periodic

review every 5 years to assess changes in fair market value.

(2) If determined to be in the government's interest, an existing lease of land may be extended prior to expiration of its term. Passage of title to facilities shall be deferred until all extensions have expired. Such extensions shall be for periods not to exceed 5 years with lease payments set at the appraised fair market rental of the land only as determined on the date of each such extension. Banking institution lessees shall continue to maintain the premises and pay for utilities and services furnished.

(3) When, under the terms of a lease, title to improvements passes to the government, arrangements normally will be made as follows:

(i) When the square footage involved exceeds that authorized in DoD 4270.1–M [9], the banking institution shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space.

(ii) The charge for continued occupancy of improved space by a banking office shall be at fair market rental value only for the associated land. The lessee shall continue to maintain the premises and pay the cost of utilities and services furnished.

(g) *Construction.* Banks may construct buildings subject to the following provisions:

(1) The building shall be solely for the use of the banking institution and may not provide for other commercial enterprises or government instrumentalities.

(2) Construction projects must meet the criteria in DoD 4270.1–M.

(3) *Construction projects approval authority.* (i) Projects costing $25,000 or more shall be approved by the Major Command with an information copy sent to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall have 30 days to provide comments to the Major Command before final approval can be granted.

(ii) Projects costing less than $25,000, to include interior alterations and room or office additions to existing banking offices, shall be approved by installation commanders. Copies of approvals, including the identification of project cost, shall be furnished to the Secretary of the Military Department concerned (or designee).

(4) The Congress shall be notified of all construction projects, using other than appropriated funds and costing over $500,000, in accordance with DoD Instruction 7700.18 [10].

(5) Proposals for construction of structures on installations at a banking institution's expense shall be reviewed and reported in accordance with regulations of the Military Department concerned. The following information shall be listed to support each proposal:

(i) Number of DoD personnel at the installation plus others who may use the banking office

(ii) Square footage of the proposed building

(iii) Land area to be leased to the banking institution

(iv) Term of the lease

(v) Estimated cost of construction

(vi) Estimated fair market value of the land to be leased

(vii) Statement that the banking institution will be responsible for utility connections and other utility and maintenance costs

(viii) Statement that the building will be used only for financial services

(ix) A statement that financial institution officials understand the potential loss of the building in the event of installation closure or other delimiting condition

(x) Justification for a waiver of space criteria if the building exceeds that specified in DoD 4270.1–M.

(6) Banks shall pay for interior alterations and maintenance as well as utilities, custodial, and other furnished services.

(7) Banks shall pay all construction costs.

(h) *Bank liaison officer (BLO).* Each installation commander having an on-base banking office shall appoint a BLO. The BLO's name and duty telephone number shall be displayed prominently at each banking office on the installation. As appropriate, the BLO's responsibility shall be assigned to comptroller or resource management personnel. Employees, officials or directors of a financial institution may not serve as BLOs. The BLO shall:

(1) Ensure that the banking institution operating the banking office has the latest version of this part.

(2) Ensure that traveler's checks and money orders are not being sold by other on-base organizations when banking offices are open for business. Postal units and credit unions, however, are exempt from this restriction. Also, ensure that other financial services, to include vehicle financing on domestic installations, are offered only by the banking office.

(3) Attend financial workshops, conferences, and seminars as appropriate. These gatherings offer excellent opportunities for personnel of financial institutions and the Department to improve the military banking program. Free discussion among the attendees gives an excellent forum for planning, developing, and reviewing programs that improve financial services made available to DoD personnel and organizations.

(4) Assist, when requested by the banking office manager or the installation commander, in locating and collecting from individuals tendering uncollectable checks, overdrawing accounts, or defaulting on loans (within the guidelines of subpart C) if not otherwise prohibited by law.

(5) Maintain regular contact with the banking office manager to confer and discuss quantitative and qualitative improvements in the services provided. In executing this authority, the BLO shall not become involved in the internal operations of the financial institution.

(6) Review the schedule of service charges and fees annually, and ensure that the operating agreement is updated at least every 5 years. Renegotiate the financial services offered and related service charges and fees as necessary.

(7) Assist in resolving customer complaints about banking services.

(8) Assist in resolving complaints of discrimination with financial services by the banking institution. If a complaint cannot be resolved, a written request for investigation shall be forwarded to the appropriate regulatory agency. Any such request must document the problem and command efforts taken toward its resolution. Information copies of all related correspondence shall be sent through channels to the Secretary of the Military Department concerned (or designee) for transmittal to the DFAS.

(9) Assist the installation commander to report to the appropriate regulatory agency any evidence suggesting malpractice by banking office personnel.

(i) *In-store banking.* Under the direction and approval of the installation commander, an on-base financial institution may provide in-store banking within the premises of a commissary operated by the Defense Commissary Agency, a Military Exchange, or any other on-base retail facility.

(1) Provision of the requested services, and any associated stipulations, shall be documented as an amendment to the existing operating agreement between the installation commander and the on-base financial institution that will provide in-store services.

[9] See footnote 1 to § 231.1(a).

[10] See footnote 1 to § 231.1(a).

(2) The amendment to the operating agreement shall be drafted through close coordination between the requesting DoD Component representative, the on-base financial institution representative, the bank liaison officer, and the installation commander (or designee). The final amendment shall be signed by the installation commander and the on-base financial institution with the acknowledgement of the DoD Component that will host the in-store banking operation.

(3) The installation commander shall extend the opportunity to provide the requested in-store banking services to all financial institutions located on the installation. The selection process is outlined in Appendix B of this part.

(4) Space shall be granted by the installation commander through a lease to the banking institution that will provide in-store service.

(j) *Domestic military banking facilities (MBFs).*—(1) *Domestic MBF establishment.* (i) Requests to establish MBFs shall be made only when a need for services cannot be met by other means. During mobilization, however, MBFs may be designated as an emergency measure.

(ii) Installation commanders shall send requests for an MBF with justification for its establishment through the Secretary of the Military Department concerned (or designee) to the Director, DFAS, for coordination with the Department of the Treasury. The Department of the Treasury may approve the designation of an MBF under provisions of 12 U.S.C. 265.

(iii) MBF operations may begin only after approval for MBF status is granted by the Department of the Treasury.

(2) *MBF conversion.* (i) Where MBFs exist, installation commanders shall encourage their conversion to independent or branch banks.

(ii) Proposals from the on-base banking institution to convert an existing MBF to an independent or branch bank shall be sent through command channels to the Secretary of the Military Department concerned (or designee) for approval. The Secretary of the Military Department (or designee) shall forward the request to the Director, DFAS, for coordination with the Department of the Treasury.

(iii) Unsolicited proposals from banking institutions to establish independent or branch banks where an MBF exists shall be forwarded through command channels to the Secretary of the Military Department concerned (or designee). Each proposal shall be evaluated on its own merits.

(A) The installation commander shall inform the banking institution operating the MBF that an unsolicited proposal for a banking office has been received and shall offer that incumbent institution the opportunity to submit its own proposal.

(B) Preference to operate an independent or branch bank shall be given to the banking institution that has operated the MBF, provided that the banking service previously rendered has been satisfactory and that the institution's proposal is adequate.

(3) *MBF termination.* The Director, DFAS, shall coordinate the termination of a financial institution's authority to operate an MBF with the Department of the Treasury.

§ 231.6 Procedures—overseas banks.

(a) *General provisions of banking services overseas.* The Department acquires banking services overseas for use by authorized persons and organizations from the following sources:

(1) MBFs operated under contract and authorized by the pertinent status of forces agreement, other intergovernmental agreements, or host-country law.

(2) Domestic and foreign banking institutions located on overseas DoD installations. Each such institution shall be:

(i) Chartered to provide financial services in that country.

(ii) A party to a formal operating agreement with the installation commander to provide such services.

(iii) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(b) *Establishment.*—(1) *Overseas MBFs Operated Under Contract.* Installation or community commanders requiring banking services will send a request through command channels to the Secretary of the Military Department concerned (or designee) for concurrence and subsequent transmittal to the Director, DFAS, for approval.

(i) Requests to establish MBFs shall include, but are not limited to, the following information:

(A) The approximate number of DoD personnel at the installation and in the community and any other persons who may be authorized to use the MBF.

(B) The distance between the installation and the nearest MBF and credit union office, the names; addresses, and telephone numbers of the operators of those institutions; and the installations and communities where they are located.

(C) The availability of official and public transportation between the installation or community and the nearest MBF and credit union office.

(D) The name and location of the depository used to make official deposits for credit to the TGA.

(E) A list of organizational and nonappropriated fund accounts, the name and location of the financial institutions where deposited, and the average daily activity and balance of each account.

(F) A written description and photographs or drawings of the space proposed for MBF use. The extent and approximate cost of required alterations, including the construction of counters and teller cages.

(G) A statement that recognizes the logistical support, including equipment, to be provided by the local command as detailed in paragraph (c) of this section. The statement will include the costs of such equipment and the manner in which it will be acquired.

(H) In countries where no MBFs currently are operated under contract, a statement from the cognizant Combatant Command that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation in accordance with paragraph (c)(1)(i) of this section.

(I) Any other pertinent information to justify the establishment of an MBF.

(ii) As a general rule, MBFs may be established only when the installation or community population meets the following criteria:

(A) *Full-time MBF.* Except in unusual circumstances, a total of at least 1,000 permanent military personnel and DoD civilian employees are necessary to qualify for a full-time MBF.

(B) *Part-time MBF.* Except in unusual circumstances, a total of at least 250 permanent military personnel and DoD civilian employees are necessary to qualify for a part time MBF.

(iii) If the population at a certain remote area is not sufficient to qualify under the criteria for full-time or part-time MBFs, the installation or community commander will explore all other alternatives for acquiring limited banking services before requesting establishment of an MBF as an exception to these provisions. Alternatives to limited banking services include installation of ATMs and check cashing and accommodation exchange service by disbursing officers and their agents.

(iv) Establishment of an overseas MBF is predicated on and requires:

(A) Designation of the MBF contractor as a depositary and financial agent of the U.S. Government by the Department of the Treasury.

(B) The availability of banking contractors interested in bidding for the

operation of the facility and the viability of such proposals.

(C) The availability of appropriated funds to underwrite such banking services.

(D) Establishment of a U.S. dollar currency custody account to support banking operations.

(2) *Other overseas banking offices.* Where a need for financial services has been identified and either the banking and currency control laws of certain host countries do not permit MBFs to operate on DoD installations or MBFs, where permitted, have not been established, then the following applies:

(i) Installation or community commanders shall send requests for banking services or unsolicited proposals from foreign banking institutions to their Major Commands with supporting data as required in § 231.5(b)(1).

(ii) Major Commands shall forward installation or community commander requests to the Secretary of the Military Department concerned (or designee) for approval. The Secretary of the Military Department concerned (or designee) shall coordinate with the DFAS to seek the designation of the parent foreign banking institution as a depositary and financial agent of the U.S. Government by the Department of the Treasury.

(iii) Banking offices in this category cannot become operational until the foreign parent banking institution has been designated a depositary and financial agent of the U.S. Government. The institution also shall indicate a willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits. Any collateral pledged shall be in a form acceptable to the DFAS and the Department of the Treasury.

(c) *Logistical support.—(1) Overseas MBFs operated under contract.* (i) Given that appropriated funds support those MBFs that are operated under contract, installation or community commanders shall provide the MBFs logistical support to the maximum possible extent. Such support normally includes:

(A) Adequate office space, including steel bars; grillwork; security doors; a vault, safes, or both; security alarm systems and camera surveillance equipment (where deemed necessary) that meet documented requirements of the MBF contractor's insurance carrier; construction of counters, teller cages, and customer and work areas; necessary modifications and alterations to existing buildings; and construction of new MBF premises, if necessary.

(*1*) The size and arrangement of space should permit efficient operations. Space assigned may not exceed that prescribed in DoD 4270.1–M.

(*2*) All maintenance, repair, rehabilitation, alterations, or construction for banking offices shall comply with guidelines established by the installation commander.

(B) Office space in a building that is accessible to most users and permits the maximum security. In addition, office space for MBF area and district administrations and storage space for retention of records, files, and storage of supplies.

(C) DoD housing on a rental basis to assigned MBF staff that are designated as key and essential MBF managerial personnel who are unable to find suitable, reasonably priced housing in the vicinity of the DoD installation, subject to the assignment procedures and other requirements of DoD 4165.63–M.[11]

(D) Education, on a space-available, tuition-paying basis, provided by the Department of Defense Education Activity to minor dependents of assigned staff in accordance with DoD Directive 1342.13.[12]

(E) Air conditioning, which is considered a normal utility for banking offices located at installations that qualify for air conditioning under applicable regulations. Banking space is classified as administrative space at military installations.

(F) Utilities (i.e., electricity, natural gas or fuel oil, water and sewage), heating, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal).

(G) Defense Switched Network (DSN) voice and data communication to include, where feasible, Internet access.

(H) Military guards, civilian guards (for use within the installation), military police, or other protective services to accompany shipments of money. This level of protective service also shall be provided at other times as required to include replenishment of ATM currency and receipts, alarm system failures, and to avoid undue risks or insurance costs on the part of the MBF.

(I) U.S. Military Postal Service access in accordance with DoD Directive 4525.6.[13] Use of free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater.

(J) Office equipment and furniture on memorandum receipt if available from local stock. If office equipment or furniture is unavailable, statements of nonavailability shall be issued.

(K) Vehicle registration and fuel sales from government-owned facilities for bank-operated vehicles, if not in conflict with host government agreements. Vehicle registration shall be subject to normal fees.

(L) Issuance by local commanders of invitational travel orders, at no expense to the U.S. Government when required for official onsite visits by U.S. based banking institution officials.

(ii) Suggestions for changes to the logistical support provisions of the MBF contract may be forwarded for consideration through command channels to the Director, DFAS.

(2) *Other overseas banking offices.* (i) Logistical support provided to such offices will be negotiated with the parent foreign banking institution and incorporated into the written operating agreement.

(ii) Logistical support shall not exceed that provided to contract MBFs, as specified in paragraph (c)(1) of this section.

(d) *Operations.*—(1) *General conditions of MBF operation.* (i) Before initiating MBF operations, a written agreement shall be negotiated directly and signed by the installation or community commander and a senior official of the banking contractor or other financial institution concerned. One copy of the agreement with U.S. banking contractors and two copies of the agreement with institutions other than U.S. banking contractors shall be forwarded through command channels to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall forward one copy of the agreement with institutions other than U.S. banking contractors through command channels to the Director, DFAS. A copy of the agreement also shall be maintained at all times by the installation or community commander and the banking institution manager.

(ii) For MBFs operated by U.S. banking contractors, the agreement shall state operating details not set forth in the contract. Though the contract limits the number of operating hours per week, local commanders and MBF managers should set days and hours of operation to best meet local needs. Operating times may include Saturdays and evening hours when necessary to complement other retail services for DoD personnel, provided the contractor can implement that service at no

[11] See footnote 1 to § 231.1(a).

[12] See footnote 1 to § 231.1(a).

[13] See footnote 1 to § 231.1(a).

additional cost to the government. When added cost is involved, the commander shall send a request including reasons for expanded or modified times of operation, through command channels, to the Secretary of the Military Department concerned (or designee) for action. If approved, the request, with recommendations, shall be forwarded to the Director, DFAS (or designee).

(2) *Overseas MBFs operated under contract.*—(i) *General.* Overseas MBFs shall operate under terms and conditions established at the time of contract negotiations and confirmed in respective contracts or contracting officer determinations.

(ii) *Authorized customers.* DoD banking contracts specify the personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals that qualify for individual logistic support under the regulations of the DoD Component concerned, provided that the use of banking services is not precluded by status of forces agreements, other intergovernmental agreements, or host-country law.

(iii) *Services rendered.* DoD banking contracts specify the services to be rendered and related charges. Suggestions for expansion or modification of authorized services, fees or charges may be forwarded through DoD Component channels to the Director, DFAS. Proposals for any new service must be coordinated with the appropriate Combatant Command and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with the status of forces agreements, other intergovernmental agreements, or host-country law.

(iv) *Regulation to be provided.* The Director, DFAS (or designee) shall advise each U.S. banking contractor operating an overseas MBF of this Regulation and furnish a copy to the contractor.

(v) *Conditions of operation.* (A) Part-time and payday service MBFs shall provide limited services that mirror, to the extent feasible, those provided by full-time MBFs. Since part-time MBFs operate out of nearby MBFs, installation or community commanders shall provide and fund transportation and guards for their operation.

(B) Any deficiency of banking services under DoD banking contracts shall be reported to the manager of the MBF within 7 calendar days of noting the deficiency. If the problem has not been corrected within 30 calendar days after being noted, the commander shall report the problem through DoD Component channels to the Director, DFAS (or designee).

(C) The MBF contractor and military disbursing officers shall establish cash management practices that minimize the cash required conducting business.

(D) Commanders shall assist MBF contractors to develop and update contingency plans for banking services in the event of hostilities or other emergencies.

(E) MBF provision of foreign currency shall be in accordance with Volume 5, Chapter 13 of The DoD Financial Management Regulation (DoD 7000.14–R).

(3) *Other overseas banking offices.*—

(i) *Authorized customers.* The list of authorized customers shall be negotiated between the installation commander and the foreign banking institution and shall be reflected in the operating agreement. The list of authorized customers included in the operating agreement shall be consistent with the applicable status of forces agreement, other intergovernmental agreements, or host-country law.

(ii) *Services rendered.* Services and charges shall parallel, whenever practical, the services and charges of MBFs operated under contract. Specific services shall be negotiated and included in the agreement with the foreign banking institution. A copy of the agreement shall be sent through DoD Component channels to the Director, DFAS (or designee).

(iii) *Operating agreements.* Before agreements are executed, they will be coordinated with and approved by the cognizant Combatant Command (or designee).

(iv) *Conditions of operation.* A foreign banking institution shall provide equipment (except that furnished by the installation or community), supplies, and trained personnel.

(4) *Relocation of MBF.* (i) When an MBF is moved from one location to another at the same installation or community, the commander shall notify the cognizant Military Department, through command channels. The Military Department shall forward the information to the Director, DFAS (or designee).

(ii) For all other relocations, prior approval from the Director, DFAS (or designee) shall be obtained through DoD Component channels.

(5) *Comments.* Installation or community commanders shall send their banking comments through DoD Component channels to the Director, DFAS (or designee) for any of the following:

(i) Major changes in installation population that would affect use of the MBF.

(ii) Opinion that the space assigned is not adequate for the efficient operation of the MBF including a statement concerning corrective action.

(iii) Suggestions that might improve the MBF operation, increase efficiency, or decrease costs.

(iv) Pending developments that may have a material impact on the MBF operation.

(6) *Bank liaison officer.* The duties of the BLO are outlined in § 231.5(h).

(e) *Termination.* Requests to eliminate any or all MBFs in a foreign country shall include documentation that the U.S. Chief of Diplomatic Mission has been informed and that arrangement for local termination announcements and procedures have been made with the U.S. Embassy.

(1) *Overseas MBFs operated under contract.* In cases where an installation or community no longer can justify overseas MBF operations, the commander shall notify the Secretary of the Military Department concerned (or designee) through command channels.

(i) The report shall state whether a part-time MBF should be established and specify the days each week that the MBF would be needed.

(ii) The Secretary of the Military Department (or designee) shall send this report with recommendations to the Director, DFAS (or designee).

(2) *Other overseas banking offices.* Termination actions, when required, shall be taken in accordance with the applicable clauses in the operating agreement. Notice of intent to terminate, including the closing date, shall be sent through DoD Component channels to Director, DFAS (or designee), who shall notify the Department of the Treasury so that the foreign banking institution's authority as a Depositary and Financial Agent of the U.S. Government at that location may be revoked.

§ 231.7 Procedures—domestic credit unions.

(a) *General policy.* Given their role in promoting morale and welfare, on-base credit unions shall be recognized and assisted by DoD Components at all levels. These financial institutions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(b) *Establishment.* A demonstrated need for credit union services may be addressed by establishing a new full-service credit union or by opening a branch office or facility of an existing credit union under the common bond principle.

(1) DoD personnel seeking to establish a new full-service credit union shall submit a proposal to the installation commander for review. In addition to the information identified in § 231.5(b)(1), the proposal shall include a request for the establishment of a field of membership that includes all personnel at the installation. Upon installation commander concurrence, the proposal shall be forwarded through DoD Component channels to the Secretary of the Military Department (or designee).

(2) The Secretary of the Military Department concerned (or designee) shall:

(i) Obtain a list of credit unions that could establish eligibility to serve the installation's military members and civilian employees from the National Credit Union Administration (NCUA) Regional Office that has geographic jurisdiction and the applicable state regulatory agency.

(ii) Prepare and send formal solicitation letters to eligible credit unions informing them of an opportunity to establish a branch office at the installation.

(iii) In coordination with the installation commander, establish the criteria for selection of a specific credit union in accordance with § 231.5(c)(4). Proposals shall be evaluated, and a selection made, based upon the factors and weights developed for the solicitation.

(3) Upon approval by the Secretary of the Military Department (or designee), the NCUA or applicable state regulatory agency shall be notified and asked to establish or amend the selected credit union's charter to include the new location.

(4) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has approved the requested charter change.

(c) *Terminations.*—(1) *Voluntary credit union terminations.* (i) When a credit union plans to end operations on a DoD installation, it shall be required to notify the installation commander 180 days before the closing date. Such notification shall be required to precede public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the credit union to continue operations until the installation has made other arrangements.

(ii) The installation commander shall inform the Secretary of the Military Department concerned (or designee) immediately upon receiving notification of a closing. The report shall include a recommendation about continued credit union service on the installation. Paragraph (b) of this section applies if continued service is needed.

(2) *Termination for cause.* If, after discussion with credit union officials, an installation commander determines that the operating policies of a credit union are inconsistent with this Regulation, a recommendation for termination of logistical support and space arrangements may be made through the Secretary of the Military Department concerned (or designee). A credit union shall be removed from the installation only with approval of the Secretary of the Military Department (or designee) after coordination with the USD(C) through the Director, DFAS, and the appropriate regulatory agency.

(3) *Termination in the interest of national defense.* At the option of the government, leases may be terminated in the event of national emergency or as a result of installation deactivation, closing, or other disposal action.

(4) *Termination resulting from merger, acquisition, or change of control.* When merger, acquisition, change of control or other action results in violation of the terms and conditions of the existing operating agreement, the Secretary of the Military Department (or designee) shall, subsequent to coordination with the USD(C), through the Director, DFAS, terminate the operating agreement with the existing credit union. When the merger, acquisition, change of control or other action does not result in violation of the terms and conditions of the existing operating agreement, the Secretary of the Military Department (or designee) shall initiate a novation action of the operating agreement identifying the change in control.

(5) *Termination of lease.* The lessee shall provide written notice 180 days prior to a voluntary termination of the lease. Upon lease termination, the government has the option to cause the title of all structures and other improvements to be conveyed to the United States without reimbursement, or require the lessee to remove the improvements and restore the land to its original condition.

(d) *Use of space, logistical support, and military real property for domestic credit unions.*—(1) *Criteria for use of space in Government-owned real property.* (i) Criteria governing the assignment of space and construction of new space for credit unions are in DoD 4270.1–M.

(ii) A credit union may be furnished space on a DoD installation at one or more locations for periods not exceeding 5 years except where the credit union uses its own funds to improve existing government space as outlined in paragraphs (d)(1)(ii)(C) and (d)(1)(ii)(D) of this section. The cumulative total of space furnished shall be subject to the limitations of DoD 4270.1–M.

(A) The furnishing of office space (including ATM placement) to on-base credit unions is governed by section 170 of the Federal Credit Union Act (12 U.S.C. 1770). The provision of no-cost office space for a period not to exceed 5 years is limited to credit unions if at least 95 percent of the membership to be served by the allotment of space is composed of individuals who are, or who were at the time of admission into the credit union, military personnel or federal employees, or members of their families. A written statement to the effect that the credit union meets the 95 percent criterion shall be required to justify and document the allotment of free government space. This statement shall be prepared on the credit union's letterhead and signed either by the chairman of the board of directors or the president. A certification also shall be required whenever there is a merger, takeover, or significant change in a field of membership. This certification shall serve as justification and documentation for the continued allocation of free government space including space renovated with credit union funds. The statement shall be updated every 5 years and on renewal of each no-cost permit or license. (See appendix C of this part for a sample format of the statement.)

(B) Credit unions that fail to meet the 95 percent criterion shall be charged fair market rental for space provided. Except where more than one credit union exists on an installation prior to June 9, 2000, credit unions giving less than full service or not serving all assigned DoD personnel are not authorized no-cost office space.

(C) When a credit union that meets the 95 percent criterion uses its own funds to expand, modify, or renovate government-owned space, it may be provided a no-cost permit or license for a period commensurate with the extent of the improvements not to exceed 25 years as determined by the DoD Component concerned. The permit or license shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In this latter case, the no-cost permit shall be cancelled in favor of a lease immediately negotiated at fair market value under the provisions of paragraph (d)(1)(ii)(B) of this section. If the credit union desires, this permit or license may extend through the period identified in the

original permit or license not to exceed 25 years.

(D) Similarly, a credit union not meeting the 95 percent criterion that uses its own funds to expand, modify, or renovate government-owned space, may be provided a lease at fair market value for a period not to exceed 25 years subject to periodic review every 5 years to assess changes in fair market value. Duration of this lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

(iii) All space assigned by the GSA, whether leased or in a federal office building, is reimbursable to the GSA at the standard level user charge. Consequently, the GSA shall charge the benefiting DoD Component for any space assigned for credit union operations. Such space is subject to the provisions of paragraph (d)(1)(i) and (ii) of this section.

(2) *Logistical support.* When available, custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal), heating and air conditioning, utilities (i.e., electricity, natural gas or fuel oil, water, and sewage), fixtures, and maintenance shall be furnished without cost to credit unions occupying no-cost office space in government buildings. With the exception of intrastation telephone service, credit unions shall be required to pay for all communication services to include telephone lines, long distance data services and Internet connections. Credit unions also shall pay for space alterations. Should a credit union fail to meet the 95 percent membership criterion, any logistical support furnished shall be on a reimbursable basis.

(3) Leases executed before the issuance of this part may not be altered solely as a result of the provisions of this part unless a lessee specifically requests a renegotiation under these provisions. No lease may be negotiated or renegotiated, nor may any rights be waived or surrendered without compensation to the government.

(4) When a credit union participates in the construction of a shopping mall complex the lease shall cover only land where the branch or facility physically is located.

(5) *Administrative fees.* All administrative fees associated with the initiation, modification, or renewal of an outgrant shall be borne by the installation, provided that the credit union satisfies the 95 percent membership criterion requirement for no-cost office space as outlined paragraph (d)(1)(ii)(A) of this section, and that the fees are associated with the no-cost space.

(e) *Land leases.* Credit unions entering into a land lease to construct a building on a DoD installation shall do so in accordance with § 231.5(f).

(f) *Construction.* Credit unions constructing a building on a DoD installation shall do so in accordance with § 231.5(g).

(g) Credit unions offering ATM service shall do so in accordance with § 231.4(d).

(h) *Staffing.* (1) On-base credit unions shall provide full service. To do so, credit union offices shall be staffed by:

(i) An official authorized to act on loan applications.

(ii) An individual authorized to sign checks; and

(iii) A qualified financial counselor available to serve members during operating hours.

(2) Exceptions to paragraph (h)(1)(i) of this section may be approved by the installation commander with advice from the Secretary of the Military Department concerned (or designee) in the case of newly organized credit unions.

(3) When an on-base credit union can support only minimum staffing, one of the positions required in paragraph (h)(1)(i) of this section or paragraph (h)(1)(ii) of this section also may be subsumed under the counselor duties.

(4) Credit union remote service locations at the same installation may be staffed with one person alone, provided that a direct courier or an electronic or automated message service links each remote location to the credit union's main office.

(i) *Credit union liaison officer (CULO).* When a credit union office is located on an installation, the commander shall appoint a CULO. As appropriate, the CULO responsibility should be assigned to comptroller or resource management personnel. The CULO's name and duty telephone number shall be displayed prominently at each credit union office on the installation. Anyone who serves as a credit union board member or in any other official credit union capacity may not serve as a CULO. The duties of a CULO are the same as the duties listed for a BLO (see § 231.5(h)).

(j) *In-store banking.* In-store banking services may be provided in accordance with § 231.5(i) except that:

(1) Credit unions interested in submitting proposals to provide requested in-store banking services shall provide a statement from the NCUA or applicable state regulatory agency certifying the credit union's authority to offer the requested financial services to the commissary, Military Exchange, or other on-base facilities.

(2) Space granted to a credit union selected to provide in-store banking services should be issued through a no-cost license in accordance with section 170 of the Federal Credit Union Act (12 U.S.C. 1770).

§ 231.8 Overseas credit unions.

(a) *General policy.* (1) Credit union services to authorized persons and organizations may be provided by domestic on-base credit unions operating under a geographic franchise.

(2) The extension of credit union service overseas is encouraged consistent with the principles prescribed for domestic credit unions and with applicable status of forces agreements or other intergovernmental agreements, or host-country law.

(3) Where permitted by the status of forces agreements or other intergovernmental agreements, or host-country law, only federal credit unions or federally insured state chartered credit unions may operate on overseas DoD installations. The ultimate decision to provide services overseas rests with the credit union itself.

(b) *Establishment.* (1) Commanders shall notify the Secretary of the Military Department concerned (or designee), through command channels, when overseas credit union services are needed. Such requests shall include:

(i) Full information about available space and logistical support.

(ii) The name and location of the nearest credit union facility or branch.

(iii) The distance between the installation and the nearest credit union facility or branch.

(iv) The availability of any official or public transportation.

(v) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(vi) In countries not presently served, a statement concurred in by the cognizant Combatant Command that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy. The statement shall include that the host country will permit credit union operations and will indicate any conditions imposed by the host country with respect to those operations.

(2) Subsequent to approval of the request from the installation or community commander to establish an overseas credit union facility, the Secretary of the Military Department concerned (or designee) shall solicit proposals for the provision of full credit

union services under the following provisions.

(i) Where there is a DoD designated geographic franchise with a specific field of membership, the Secretary of the Military Department (or designee) shall direct the installation or community commander to contact the supporting credit union and request that a branch or facility be established. The basic decision concerning such extensions of service rests with the servicing credit union. The Director, DFAS (or designee) shall maintain a listing of all geographic franchises assigned to credit unions serving DoD overseas installations.

(ii) Where there is no DoD designated geographic franchise, the Secretary of the Military Department (or designee) shall:

(A) Coordinate requests, through the Director, DFAS (or designee), to obtain a geographic franchise. A geographic franchise is the authorization granted to a credit union by the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) to provide financial services in a specific geographic region located outside the United States, its territories and possessions.

(B) Solicit proposals from credit unions currently operating on DoD installations.

(C) Review proposals of interested credit unions.

(D) Coordinate with field commands, as needed.

(E) Recommend selection to the NCUA or applicable state regulatory agency with a copy to the DFAS and the OUSD(C), requesting that the appropriate field of membership adjustment be made. Such a recommendation shall identify the primary installations on which the credit union would operate and, if applicable, the contiguous geographic boundaries for future facilities and branches.

(3) Where there is an existing field of membership, the Secretary of the Military Department concerned (or designee) shall take the following actions:

(i) If a credit union on an installation terminates operation, afford any other credit union having a geographic franchise within that country an opportunity to assume the franchise being vacated. If all such institutions decline, the geographic franchise shall be offered to the federally insured credit union community. If, as a result of a credit union decision to decline service to an installation or a termination action, another credit union:

(A) Offers to provide service.

(B) Meets host country requirements (if any) and

(C) Is assigned the former geographic franchise or portion thereof, the NCUA or the applicable state regulatory agency shall be notified and requested to make appropriate field of membership adjustments.

(ii) When other credit union(s) having a geographic franchise within a country decline the opportunity, or there is no other credit union having a franchise within that country, the provisions of paragraph (b)(2)(ii) of this section apply.

(4) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(c) *Logistical support.* Installation or community commanders shall provide logistical credit union support. Such support normally shall include:

(1) Adequate office space, including steel bars; grillwork; security doors; a vault, safes or both; security alarm systems and camera surveillance equipment (where deemed necessary) that meet documented requirements of the credit union's insurance carrier; construction of counters, teller cages, and customer and work areas; necessary modifications and alterations to existing buildings. The size and arrangement of space should permit efficient operations. The credit union shall pay for all improvements to the space given. Space assigned may not exceed that prescribed in DoD 4270.1–M.

(2) DoD housing on a rental basis to key credit union personnel unable to find suitable, reasonably priced housing in the vicinity of the DoD installation, if available.

(3) Education, on a space-available, tuition-paying basis, provided by the Department of Defense Education Activity to minor dependents of assigned staff in accordance with DoD Directive 1342.13.

(4) Utilities (i.e., electricity, natural gas or fuel oil, water and sewage), heating, intrastation telephone service, and custodial and janitorial services.

(5) DSN voice and data communication to include, where feasible, internet access.

(6) U.S. Military Postal Service support under DoD Directive 4525.6. The use of free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater.

(7) Military guards, civilian guards (for use within the installation), military police, or other protective services to accompany shipments of money from the MBF to the credit union and return where it is impractical or not authorized to have a local armored car service or civilian police authorities entering a military installation to provide cash escort service or when the cost of obtaining such service is prohibitive. This level of protective service also shall be provided at other times as required to include replenishment of ATM currency and receipts, alarm system failures, and to avoid undue risks or insurance costs.

(d) *Travel.* Travel by credit union officials must be at no expense to the U.S. Government. Overseas commanders may issue invitational travel orders for official on-base visits by credit union officials at no cost to the U.S. Government.

(e) *Operations.* (1) An overseas credit union shall confine its field of membership to individuals or organizations eligible by law or regulation to receive services and benefits from the installation. Services shall not be provided to those personnel precluded such services by the applicable status of forces agreement, other intergovernmental agreements, or host-country law.

(2) The Department assigns overseas credit unions a prescribed geographic franchise. Any credit union, however, may continue to serve its members stationed overseas by mail or telecommunications, to include access to the Internet.

(3) A credit union proposing a new service to be offered by a branch office that is not authorized by the operating agreement shall coordinate the establishment of the new service through the cognizant Component command to the Combatant Command. The new service shall be offered only after the appropriate command's approval and coordination with the U.S. Chief of Diplomatic Mission or U.S. Embassy to ensure that the service does not conflict with the applicable status of forces agreement, other intergovernmental agreements, or host-country law.

(4) Credit unions that operate full service branches shall have U.S. currency and coin available for member transactions. In areas served by currency custody accounts, transactional U. S. currency and coins shall be made available from the servicing MBF with no direct or analysis charge to the credit union, provided settlement is made via the local MBF account or equivalent arrangements are made with the MBF.

(5) In countries served by MBFs operated under contract, credit unions shall purchase foreign currency only from the servicing MBF.

(i) The bulk rate purchase price shall apply to currency used by the credit

union to make payments to vendors or to make payroll payments.

(ii) Credit unions that desire and are authorized to provide accommodation exchange services to its members shall acquire foreign currency from the servicing MBF at the MBF wholesale rate and sell it at a rate of exchange no more favorable than that available to customers of the MBF.

(6) Credit unions operating under a geographic franchise on an overseas DoD installation shall not publicize, display or sell vehicles on the installation.

(7) The NCUA or applicable state regulatory agency may review operations of overseas credit union offices either when it examines the main credit union or at other times of its choosing. For federally insured, state chartered credit unions, the applicable state regulatory agency also may examine credit unions operations.

(f) *Glossary of terms.*—

(1) *Automated Teller Machine (ATM).* An electronic machine that dispenses cash, and may perform such other functions as funds transfers among a customer's various accounts and acceptance of deposits. Equipment generally is activated by a plastic card in combination with a personal identification number (PIN). Typically, when the cardholder's account is with a financial institution other than that operating the ATM, its use results in the assessment of a fee from the ATM network (e.g., Armed Forces Financial Network (AFFN), Cirrus, or PLUS) that processes the transaction.

(2) *Banking institution.* An entity chartered by a state or the federal government to provide financial services.

(3) *Banking office.* A branch bank, or independent bank operated by a banking institution on a domestic DoD installation or by a foreign banking institution on an overseas DoD installation.

(4) *Branch bank.* A separate unit chartered to operate at an on-base location geographically remote from its parent banking institution.

(5) *Credit union.* A cooperative nonprofit association, incorporated under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*), or similar state statute, for the purposes of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

(6) *Credit union facility.* A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide cash transaction services but must disburse loans and shares by check or draft and provide competent financial counseling during normal working hours.

(7) *Discrimination.* Any differential treatment in provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex, marital status, age, rank, or grade.

(8) *DoD Component.* For the purposes of this part, DoD Components include the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Joint Staff and the supporting Joint Agencies, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, the Uniformed Services University of the Health Sciences, all nonappropriated fund instrumentalities including the Military Exchange Services, and morale, welfare and recreation activities, and all other organizational entities within the Department of Defense.

(9) *DoD Personnel.* All military personnel; DoD civil service employees; other civilian employees, including special government employees of all offices, Agencies, and Departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

(10) *Domestic DoD installation.* For the purposes of this Regulation, a military installation located within a state of the United States, the District of Columbia, Guam or the Commonwealth of Puerto Rico.

(11) *Fair market rental.* A reasonable charge for on-base land, buildings, or building space. Rental is determined by a government appraisal based on comparable properties in the local civilian economy. The appraiser, however, shall consider that on-base property may not always be comparable to similar property in the local commercial geographic area. Examples of circumstances that may affect fair market rental include limitations of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, and the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense.

(12) *Field of membership.* A group of people entitled to credit union membership because of a common bond of occupation, association, employment, or residence within a well-defined neighborhood, community, rural district, and other persons sharing a common bond as described by credit union board of directors policy or by Interpretation Ruling and Policy Statement (IRPS) 99–1. A field of membership is defined in the credit union's charter by the appropriate regulatory agency.

(13) *Financial institution.* This term encompasses any banking institution, credit union, thrift institution and subordinate office branch or facility, each as separately defined herein.

(14) *Financial services.* Those services commonly associated with financial institutions in the United States, such as electronic banking (e.g., ATMs and personal computing banking), in-store banking, checking, share and savings accounts, funds transfers, sales of official checks, money orders, and travelers checks, loan services, safe deposit boxes, trust services, sale and redemption of U.S. Savings Bonds, and acceptance of utility payments and any other services provided by financial institutions.

(15) *Foreign banking institution.* A bank located outside the United States chartered by the country in which it is domiciled.

(16) *Full service credit union.* A credit union that provides full-time counter transaction services, to include cash operations, and is staffed during normal working hours by a loan officer, a person authorized to sign checks, and a qualified financial counselor. In overseas areas, ''full service'' includes cash operations where not prevented by:

(i) Status of forces agreements, other intergovernmental agreements, or host-country law.

(ii) Physical security requirements that cannot be resolved by the credit union or local command.

(17) *Geographic franchise.* Authorization granted to a credit union by the Office of the Under Secretary of Defense (Comptroller) to provide financial services in a specific geographic region located outside the United States, its territories and possessions.

(18) *Independent bank.* A bank specifically chartered to operate on one or more DoD installations whose directors and officers usually come from the local business and professional community. Such operations are thus differentiated from county-wide or state-wide branch systems consisting of a head office and one or more geographically separate branch offices.

(19) *In-store banking.* An expansion of financial services provided by an on-base financial institution within the premises of a commissary store operated by the Defense Commissary Agency, a Military Exchange outlet, and other on-base retail facilities.

(20) *Malpractice.* Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation or both that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials know that the applicable action or inaction violated a law or regulation.

(21) *Military banking facility (MBF).* A banking office located on a DoD installation and operated by a financial institution that the Department of the Treasury specifically has authorized, under its designation as a ''Depository and Financial Agent of the U.S. Government,'' to provide certain banking services at the installation.

(22) *National bank.* An association approved and chartered by the Comptroller of the Currency to operate a banking business.

(23) *On-base.* Refers to physical presence on a domestic or overseas DoD installation.

(24) *Operating agreement.* A mutual agreement between the installation commander and the on-base financial institution to document their relationships.

(25) *Overseas DoD installation.* A military installation (or community) located outside the states of the United States, the District of Columbia, Guam or the Commonwealth of Puerto Rico.

(26) *Part-time MBF.* A MBF that operates fewer than 5 days a week exclusive of additional payday service. When only payday service is provided, the MBF may be termed a ''payday service facility.''

(27) *Regulatory Agency.* Includes the Office of the Comptroller of the Currency, Department of the Treasury; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System; the respective Federal Reserve Banks; the National Credit Union Administration; Office of Thrift Supervision; the various state agencies and commissions that oversee financial institutions; and, for military banking facilities (MBFs), the Fiscal Assistant Secretary of the Treasury (or designee).

(28) *State bank.* An institution organized and chartered under the laws of one of the states of the United States to operate a banking business within that state.

(29) *Thrift institution.* An institution organized and chartered under federal or state law as a Savings Bank, Savings Association, or Savings and Loan Association.

Subpart B—DoD Directive 1000.11

§ 231.10 Financial institutions on DoD installations.

(a) *Purpose.* This subpart:

(1) Updates policies and responsibilities for financial institutions that serve Department of Defense (DoD) personnel on DoD installations worldwide. Associated procedures are contained in subpart A of this part.

(2) Prescribes consistent arrangements for the provision of services by financial institutions among the DoD Components, and requires that financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated herein.

(b) *Applicability.* This subpart applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter collectively referred to as ''the DoD Components''), and all nonappropriated fund instrumentalities including the Military Exchange Services and morale, welfare and recreation (MWR) activities.

(c) *Definitions.* Terms used in this subpart are set forth in subpart A of this part.

(d) *Policy.* (1) The following pertains to financial institutions on DoD installations:

(i) Except where they already may exist as of May 1, 2000, no more than one banking institution and one credit union shall be permitted to operate on a DoD installation.

(ii) Upon the request of an installation commander and with the approval of the Secretary of the Military Department concerned (or designee), duly chartered financial institutions may be authorized to provide financial services on DoD installations to enhance the morale and welfare of DoD personnel and facilitate the administration of public and quasi-public monies. Arrangement for the provision of such services shall be in accordance with this subpart and the applicable provisions of subpart A of this part.

(iii) Financial institutions or branches thereof, shall be established on DoD installations only after approval by the Secretary of the Military Department concerned (or designee) and the appropriate regulatory agency.

(A) Except in limited situations overseas (see paragraph (d)(2)(ii)(C) of this section), only banking institutions insured by the Federal Deposit Insurance Corporation and credit unions insured by the National Credit Union Share Insurance Fund or by another insurance organization specifically qualified by the Secretary of the Treasury, shall operate on DoD installations. These financial institutions may either be State or federally chartered; however, U.S. credit unions operated overseas shall be federally insured.

(B) Military banking facilities (MBFs) shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. An MBF is a financial institution that is established by the Department of the Treasury under statutory authority that is separate from State or Federal laws that govern commercial banking. Section 265 of title 12, United States Code contains the provisions for the Department of the Treasury to establish MBFs. Normally, MBFs shall be authorized only at overseas locations. This form of financial institution may be considered for use at domestic DoD installations only when the cognizant DoD Component has been unable to obtain, through normal means, financial services from a State or federally chartered financial institution authorized to operate in the State in which the installation is located. In times of mobilization, it may become necessary to designate additional MBFs as an emergency measure. The Director, Defense Finance and Accounting Service (DFAS) may recommend the designation of MBFs to the Department of the Treasury.

(C) Retail banking operations shall not be performed by any DoD Component. Solicitations for such services shall be issued, or proposals accepted, only in accordance with the policies identified in this subpart. The DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.[14]

(iv) Installation commanders shall not seek the provision of financial services from any entity other than the on-base banking office or credit union. The Director, DFAS, with the concurrence of the Under Secretary of Defense (Comptroller) (USD(C)), may approve exceptions to this policy.

(v) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in subpart A of this part.

[14] See footnote 1 to § 231.1(a).

(vi) Military disbursing offices, nonappropriated fund instrumentalities (including MWR activities and the Military Exchange Services) and other DoD Component activities requiring financial services shall use on-base financial institutions to the maximum extent feasible.

(vii) The Department encourages the delivery of retail financial services on DoD installations via nationally networked automated teller machines (ATMs).

(A) ATMs are considered electronic banking services and, as such, shall be provided only by financial institutions that are chartered and insured in accordance with the provisions of paragraph (d)(1)(iii) of this section.

(B) Proposals by the installation commander to install ATMs from other than on-base financial institutions shall comply with the provisions of paragraph (d)(1)(iv) of this section.

(viii) Expansion of financial services (to include in-store banking) requiring the outgrant of additional space or logistical support shall be approved by the installation commander. Any DoD activity or financial institution seeking to expand financial services shall coordinate such requests with the installation bank/credit union liaison officer prior to the commander's consideration.

(ix) The installation commander shall ensure, to the maximum extent feasible, that all financial institutions operating on that installation are given the opportunity to participate in pilot programs to demonstrate new financial-related technology or establish new business lines (e.g., in-store banking) where a determination has been made by the respective DoD Component that the offering of such services is warranted.

(x) The installation commander shall approve requests for termination of financial services that are substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate such requests with the USD(C), through the Director, DFAS, before notification to the appropriate regulatory agency.

(xi) Additional guidance pertaining to financial services is set forth in subpart A of this part.

(2) The following additional provisions pertain to only to financial institutions on overseas DoD installations:

(i) The extension of services by MBFs and credit unions overseas shall be consistent with the policies stated herein and with the applicable status of forces agreements, other intergovernmental agreements, or host-country law.

(ii) Financial services at overseas DoD installations may be provided by:

(A) Domestic on-base credit unions operating overseas under a geographic franchise and, where applicable, as authorized by the pertinent status of forces agreements, other intergovernmental agreements, or host-country law.

(B) MBFs operated under and authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(C) Domestic and foreign banks located on overseas DoD installations that are:

(*1*) Chartered to provide financial services in that country, and

(*2*) A party to a formal operating agreement with the installation commander to provide such services, and

(*3*) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(iii) In countries served by MBFs operated under contract, nonappropriated fund instrumentalities and on-base credit unions that desire, and are authorized, to provide accommodation exchange services shall acquire foreign currency from the MBF at the MBF accommodation rate; and shall sell such foreign currency at a rate of exchange that is no more favorable to the customer than the customer rate available at the MBF.

(e) *Responsibilities.* (1) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to this subpart.

(2) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)) shall monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(3) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services that affect the morale and welfare of DoD personnel.

(4) DoD Component responsibilities pertaining to this subpart are set forth in subpart A of this part.

Subpart C—Guidelines for Application of the Privacy Act to Financial Institution Operations

§ 231.11 Guidelines.

(a) The following guidelines govern the application of DoD Directive 5400.11 [15] to those financial institutions that operate under this part:

(1) Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of 5 U.S.C. 552 *et seq.*

(i) These financial institutions do not fit the definition of ''agency'' to which the Privacy Act applies, that is, any executive department, Military Department, government corporation, government-controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or an independent regulatory agency (5 U.S.C. 552(e) and 552a(a)(1)).

(ii) These financial institutions are not ''government contractors'' within the meaning of 5 U.S.C. 552a(o), as they do not operate a system of records on behalf of an agency to accomplish an agency function. According to the Office of Management and Budget Privacy Act Guidelines, the provision relating to government contractors applies only to systems of records actually taking the place of a federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act. Clearly, the subject institutions do not meet these criteria.

(iii) Since the Act does not apply to them, these financial institutions are not required to comply with 5 U.S.C. 552a(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within on-base banking and credit union offices.

(2) The financial institutions concerned hold the same position and relationship to their account holders, members, and to the government as they did before enactment of OMB Circular A–130. Within their usual business relationships, they still are responsible for safeguarding the information provided by their account holders or members and for obtaining only such

[15] See footnote 1 to § 231.1(a).

information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

(3) Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their account holders or members:

I hereby authorize the Department of Defense and its various Components to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

(ii) When the financial institution presents such signed authorizations, the receiving military command or installation shall provide the appropriate information.

(4) Even though an agreement described in paragraph (a)(3) of this section has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment, consistent with DoD Directives 5400.11 and 5400.7.[16] Some examples of personal information pertaining to DoD personnel that normally can be released without creating an unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

(5) When DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, they should be located by contacting the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor either shall furnish the individual's new official duty location address to the financial institution, or shall forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location. Once an individual's affiliation with the Department of Defense is terminated through separation or retirement, however, the Department's ability to render locator assistance (i.e., disclose a home address) is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department may, at its discretion, forward correspondence to the individual's last known home address. The Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with the Department.

(b) Questions concerning this guidance should be forwarded through channels to the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), The Pentagon, Washington, DC 20301–1100.

[16] See footnote 1 to 231.1(a).

Appendix A to Part 231—Sample Operating Agreement

Sample Operating Agreement Between Military Installations and Financial Institutions

Note: The following operating agreement template identifies general arrangement and content. Content of the actual operating agreement may vary according to the circumstances of each installation.

Operating Agreement Between (Name of Installation), (State or Country Installation Located) and (Name of Financial Institution).

This Agreement is made and entered into this day by and between the installation commander of (name of installation) in his or her official capacity as installation commander, hereinafter referred to as the ''commander'' and the (name of financial institution), having its principal office at (location of home office) hereinafter referred to as the ''financial institution,'' together hereinafter referred to as ''the parties.'' Whereas the commander and the financial institution enter into this Operating Agreement upon the mutual consideration of the promises, covenants, and agreements hereinafter contained.

1. The parties understand and agree that this Agreement shall in no way modify, change, or alter the terms and conditions of Lease Number (number of lease) covering the use of real property described therein, and this Agreement shall continue, subject to the termination provisions herein-after set forth, during the terms of said lease and any extensions thereof. In the case of a banking institution operating a military banking facility (MBF) overseas, this agreement will not change the conditions of the contract between the banking institution and the Department of Defense.

2. The financial institution agrees to operate a (federally or state) chartered office on-base in accordance with the policies and procedures set forth in DoD Directive 1000.11, and Volume 5, Chapter 34, of the DoD 7000.14–R (as codified in the Code of Federal Regulations (CFR) at 32 CFR parts 230 and 231, respectively); and, in addition for the Overseas Military Banking Program (OMBP), the policies and procedures set forth in the applicable DoD contract. The hours of operations shall be between (hour office opens) and (hour office closes), and on the following days (weekdays office open), except on government holidays when the financial institution may be closed. The Program Office for the OMBP shall notify the commander of any changes to the DoD contract.

3. The financial institution shall provide the following services:

a. *Services for Individuals.*

(1) Demand (checking) account services.

(2) Cashing personal checks and government checks for accountholders.

(3) Maintaining savings accounts and (any other interestbearing accounts).

(4) Selling official checks, money orders, and traveler's checks.

(5) Selling and redeeming United States savings bonds.

(6) Providing direct deposit service.

(7) Loan services.

(8) Electronic banking (i.e., automated teller machines, internet banking).

b. *Services for disbursing officers.*

(1) Furnishing cash (if the financial institution's terms for doing so is consistent with sound management practices).

(2) Accepting deposits for credit to the Treasury General Account (where the financial institution has entered into an agreement with the Department of the Treasury).

c. *Services for nonappropriated fund instrumentalities and private organizations.*

(1) Demand (checking) account services, including wire transfers.

(2) Savings accounts and nonnegotiable certificates of deposit or other interestbearing accounts offered by the banking institution.

(3) Currency and coin for change.

4. Service charges shall be as follows:

a. *Service for individuals.*

(1) No fees shall be charged to individuals for the services listed in subparagraphs 3.a.(2), and 3.a.(5), above, except for subparagraph 3.a.(2), wherein checks drawn on other financial institutions may be treated in accordance with the financial institution's established policy. Any charge to cash a government check shall not exceed that typically charged by financial institutions in the vicinity of the installation. Fees assessed to accountholders and nonaccountholders for use of automated teller machines shall be the customary service charges of the financial institution or those negotiated for base personnel per the attached schedule.

(2) Checking and savings accounts. Fees for individual checking and savings accounts shall be the customary service charges of the financial institution or those negotiated for base personnel per the attached schedule.

(3) Sale of official checks, money orders, traveler's checks and other types of financial paper. Charges for these services shall be the customary charges of the financial institution operating the on-base office.

b. *Service for Disbursing Officers.* No charge shall be made for the services listed in subparagraph 3.b.(2), above. Compensation to the financial institution shall be per its separate agreement with the Department of the Treasury. Charges, if any, for the services stated in subparagraph 3.b.(1) shall be as locally negotiated with the financial institution.

c. *Nonappropriated Fund Instrumentalities and Private Organizations.* State the charges or refer to a schedule of charges for funds and organizations that do not participate in a central banking program. For those activities participating in a central banking program, determine the compensation to the financial institution by account analysis.

5. It is agreed that the financial institution shall:

a. Notify the commander or designated representative of any proposed changes to the attached schedule of fees and services at least 30 days prior to implementation.

b. Follow the requirements in Volume 5, Chapter 34, of DoD 7000.14–R, as codified in the *Code of Federal Regulations* (CFR), and any changes thereto.

c. Comply with Department of the Treasury requirements for establishment and operation of a Treasury General Account where the financial institution agrees to act as a depository for government funds.

d. Absolve the (Military Service) and its representatives of responsibility or liability for the financial operation of the financial institution; and for any loss (including losses due to criminal activity), expenses, or claims for damages arising from financial institution operations.

e. Indemnify, and hold harmless the United States from (and against) any loss, expense, claim, or demand, including attorney fees, court costs, and costs of litigation, to which the government may be subjected as a result of death, loss, destruction, or damage in connection with the use and occupancy of (Military Service) premises occasioned in whole or in part by officers, agents or employees of the financial institution operating an office of the financial institution.

f. Favorably respond, whenever feasible, to reasonable local command requests for lectures and printed materials to support consumer credit education programs, financial management program and newcomer's briefings.

g. Prominently post in the lobby of the financial institution the name, duty telephone number of the (Bank or Credit Union) Liaison Officer.

h. Accept the government travel card in all on-base ATMs operated by the financial institution.

i. Abide by the installation fire protection program, including immediate correction of fire hazards noted by the installation fire inspector during periodic fire prevention inspections.

6. The commander shall provide the following space and support:

a. Space requirements for financial institution operations shall be administered in accordance with the existing outgrant (i.e., lease, permit or license). (Show Number of Outgrant).

b. Utilities (i.e., electricity, natural gas or fuel oil, water and sewage), heating and air conditioning, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal) on a reimbursable basis.

c. DoD housing and minor dependent education in overseas locations for military banking facility (MBF) and credit union personnel in accordance with §§ 231.6(c)(1)(i)(C), 231.6(c)(1)(D), 231.8(c)(2) and 231.8(c)(3).

7. Termination of this Agreement shall be consistent with the termination provision of the real property lease and subpart A. The Secretary of the (Military Department) shall have the right to terminate this Agreement at any time. Any termination of the right of the financial institution to operate on the installation shall render this Agreement terminated without any applicable action by the commander.

8. Any provision of this Agreement that is contrary to or violates any laws, rules, or regulations of the United States, its agencies, or the state of (state in which the financial institution is located) that apply on federal installations shall be void and have no force or effect; however, both parties to this Agreement agree to notify the other party promptly of any known or suspected continuing violation of such laws, rules, or regulations.

9. So long as this Agreement remains in effect, it shall be reviewed jointly by the commander and the financial institution at least once every 5 years to ensure compatibility with current DoD issuances and to determine if any changes are required to the Agreement.

In witness whereof, the commander, and the financial institution, by their duly authorized office, have hereunto set their hands this day of (month, day, year).

_____

Financial Institution Official

_____

Installation Commander

Appendix B to Part 231—In-Store Banking

A. *Selection Process.* The purpose of this guidance is to assure an impartial and thorough process to select the best on-base financial institution to provide in-store banking services when such services are desired and approved by the installation commander.

1. Consistent with DoD Component delegation, the final decision to solicit for an in-store banking office rests with the installation commander.

2. The DoD Component seeking in-store banking (e.g., in buildings operated by the Defense Commissary Agency, Military Exchange Services and MWR activities) shall draft the solicitation letter.

3. Close coordination among all cognizant DoD organizations is essential throughout the selection process.

B. *Specific Procedures*

1. The need for in-store banking service may be identified from either:

a. An unsolicited proposal from an on-base financial institution,

b. A DoD Component's request, or

c. An installation commander's request.

2. The cognizant installation commander (or designee) is responsible for assessing the environment and authorizing the Bank/Credit Union Liaison Officer(s) to pursue the acquisition of in-store banking services. If no authorization is given, no further action is required.

3. The cognizant installation commander shall determine whether a solicitation is required. (A solicitation shall be required whenever there are two or more financial institutions on a DoD installation.) If no solicitation is required, then the Bank/Credit Union Liaison Officer shall work directly with the on-base financial institution to obtain the requested services. Where there is neither a banking office nor an on-base credit union, use the solicitation process outlined in §231.5(c) of this chapter, as supplemented by the provisions outlined in paragraph A, above.

4. The solicitation letter shall identify the financial services being requested and classify these services as either mandatory or optional. In addition, the solicitation letter shall highlight any services that will be weighed as more important than others during the evaluation of the proposals. Any space consideration and terms of the proposed agreement also shall be identified in the letter.

5. The installation commander (or designee) formally shall notify the selected financial institution and request that institution to coordinate with the proper activity to begin any construction, modifications or renovations necessary to open the in-store banking office. The cognizant facility management personnel shall begin the process of obtaining the necessary outgrant instruments. Concurrently, the requesting DoD Component representative and the financial institution representative shall draft the appropriate amendment to the operating agreement. The amendment should contain provisions regarding:

a. The roles and responsibilities of all parties involved.

b. The financial services to be provided, and

c. The logistical support arrangements to include custodial services and security provisions. The amendment should be coordinated with the Bank/Credit Union Liaison Officer(s) prior to forwarding that document to the installation commander for signature. The amendment shall be signed by the installation commander (or designee) and the appropriate financial institution official with a copy furnished to the Secretary of the Military Department concerned (or designee) and the Director, DFAS (or designee).

Appendix C to Part 231—Sample Certificate of Compliance for Credit Unions Certificate of Compliance

I, (name), Chairman of the Board of Directors or President of the (credit union), located at (place), certify that this credit union complies with the requirements of section 170 of the Federal Credit Union Act (12 U.S.C 1770), for the allotment of space in federal buildings without charge for rent or

services. The provision of no-cost office space is limited to credit unions if at least 95 percent of the membership to be served by the allotment of space is composed of individuals who are, or who were at the time of admission into the credit union, military personnel or federal employees, or members of their families.

(Date)

(Name)
(Chairman of the Board of Directors or the President)

Note: The Certificate of Compliance shall be written on credit union letterhead.

Dated: August 29, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 01–22173 Filed 9–6–01; 8:45 am]

BILLING CODe 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD011/108–3056a; FRL–7040–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the Control of Iron and Steel Production Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to the applicable test methods for use at iron and steel facilities. The revisions also establish a visible emission standard for Basic Oxygen Furnace (BOF) Shops at integrated steel mills. Finally the revisions remove certain obsolete requirements related to coke ovens and hearth furnaces. These SIP revisions were submitted by the Maryland Department of the Environment (MDE) on April 2, 1992 and October 10, 2000. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on November 6, 2001 without further notice, unless EPA receives adverse written comment by October 9, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us'' or ''our'' are used we mean EPA.

Table of Contents

I. What Is EPA Approving?

We are approving as a SIP revision the use of the stack testing methods for particulates and sulfur oxides, and the test methods for visible emission tests contained in Supplement 3 of the Maryland document Technical Memorandum 91–01 Test Methods and Equipment Specifications for Stationary Sources (TM–91) for use at iron and steel facilities in Maryland. This reference can be found in COMAR 26.11.10.06 (formerly COMAR 26.11.10.07). COMAR 26.11.01 General Administrative Provisions is also being revised to refer to TM–91. TM–91 is incorporated by reference in COMAR 26.11.01.04C and this reference may now refer to Supplement 3 of TM–91 which contains the new visible emissions test method for the BOF shop. In addition we are approving as a SIP revision a visible emission standard for basic oxygen furnace shops (BOF) and the removal of obsolete regulations regarding hearth shops and coke ovens in COMAR 26.11.10 Control of Iron and Steel Production Installations.

II. What New Stack Test Methods Will Apply to These Iron and Steel Installations?

The stack test methods in the Air Management Administration Technical Memorandum: Stack Test Methods for Stationary Sources (June 1983) are being replaced by the Federally enforceable updated methods found in TM–91. These Federally enforceable methods are Method 5 for particulates, and Method 8 for sulfur oxides as found in 40 CFR part 60, appendix A.

III. What Visible Emission Test Methods Are Going To Apply to Iron and Steel Installations?

Several of the visible emission test methods that currently apply to these facilities will continue to apply. The following methods found in AMA–TM 81–04 Procedures for Observing and Evaluating Visible Emissions from Stationary Sources (the current SIP approved visible test method document) are also found in TM–91: Method 9 Determination of Visible Emissions from Stationary Sources; and Methods 9H Determination of the Opacity of Visible Fugitive Emissions from the ''G'', ''H'' , ''J'' and ''K'' Blast Furnace Casthouses; Method 9I Determination of the Opacity of Visible Fugitive Emissions from the ''L'' Blast Furnace Casthouses; and Method 9J Determination of Opacity of Visible Fugitive Emissions from the No. 7 Sinter Plant. These methods are contained in Supplement 3 of TM 91–01 with the following identification: Method 1004, Methods 1004 F–H respectively. They have essentially been included in TM–91 without substantive changes. However Supplement 3 of TM–91 include one new method, Method 1004I that has not previously been included in the State Implementation Plan. Method 1004I was specifically developed to be used in conjunction with the opacity standard developed for BOF shops and currently only applies to BOF shops at Bethlehem Steel's Sparrow Point facility in Baltimore. The method varies somewhat from Method 9 found in 40 CFR part 60, appendix A since Method 9 is not directly applicable to fugitive emissions. This particular method was agreed to as part of a consent agreement between EPA, MDE and Bethlehem Steel.

IV. What Is the Visible Emission Limit for the BOF Shop?

According to the SIP revision, visible emissions cannot be greater than 15

percent opacity from the basic oxygen furnace shop roof monitor based on a three observation rolling arithmetic average of the opacity records recorded on each of three (3) calendar days. One exceedance of the 15 percent standard during a calendar year is allowed. However, all further exceedances are violations of the standard.

V. How Often Will Compliance With the Opacity Standard for the BOF Shop Be Determined?

At a minimum, visible emission observations shall be made weekly on three different calendar days during the week.

VI. What Regulations Are Being Removed Because They Are Obsolete?

Regulations pertaining to hearth shops and coke ovens are being removed from COMAR 26.11.10. Coke oven regulations were only applicable to the Bethlehem Steel facility at Sparrows Point. As of March 17, 1999, all coke ovens were being demolished and there are no plans to produce coke at this facility. If new coke ovens are constructed, they would have to comply with Maximum Achievable Control Technology (MACT) requirements and New Source Review (NSR) requirements. Maryland retained some coke oven regulations related to pushing emissions and limiting the sulfur content of coke oven gas pending promulgation of future MACT standards. The limitation on sulfur in coke oven gas that remains in the SIP is technically a relaxation since it allows the use of coke oven gas with a concentration of 1 percent sulfur in the gas instead of 0.3 percent sulfur. Based on the old regulations which are being removed, an old existing facility had to meet the limit of 1 percent sulfur while any new coke oven capacity from a modification or construction of an oven needed to meet the 0.3 percent sulfur limit.

The 1 percent limit that remains is therefore less restrictive. However, as mentioned above there are no operating coke ovens in the state, and it is highly unlikely that any new ovens will be built. If new coke ovens are built, they will need to comply with more recent regulations such as MACT and NSR. NSR requires that new sources demonstrate that good air quality will be maintained. For all practical purposes, this change regarding sulfur in coke oven gas and removal of other coke oven regulations is unlikely to result in any adverse environmental effects. Regarding the open hearth furnace regulations, the only affected facilities are located at the Sparrows Point facility. These furnaces have not operated since 1989 and the company requested that their registration be deleted.

VII. What Are the Environmental Effects of This Action?

By establishing a visible emissions limit for the BOF shop these fugitive particulate emissions are now limited and the opacity standard provides more protection for the environment. Although some of the regulations regarding coke ovens and open hearth furnaces are being removed or modified, this will have no practical effect on the environment since these facilities either do not exist or are officially no longer operating. If new facilities of these types were to be constructed or to restart operations, they would have to comply with more recent environmental regulations of MACT and NSR.

VIII. EPA's Rulemaking Action

We are approving revisions to the Maryland SIP submitted on April 2, 1992 and October 10, 2000. The revisions allow for the use of Supplement 3 of TM–91 for iron and steel facilities, establish an opacity standard for BOF shops, and remove obsolete regulations pertaining to coke ovens and open hearth furnaces from COMAR 26.11.10. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. However, in a separate document in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 6, 2001 without further notice unless we receive adverse comment by October 9, 2001. Should we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Administrative Requirements

A. General Requirements

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2001. 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 regarding changes to Maryland's control of iron and steel production installations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 10, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(153) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(153) Revisions to the Maryland State Implementation Plan submitted on April 2, 1992 and October 10, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated April 2, 1992 from the Maryland Department of the Environment transmitting revisions to the testing and observation procedures for iron and steel production operations

(B) The following revised Maryland provisions, effective February 17, 1992.

(*1*) Revised COMAR 26.11.10.07.

(*2*) Technical Memorandum 91–01, Supplement 1—Appendix A, Test Method 5 and Method 8.

(C) Letter dated October 10, 2000 from the Maryland Department of the Environment transmitting revisions to regulations and technical memoranda governing control of iron and steel production operations.

(D) The following revised Maryland provisions, effective November 2, 1998.

(*1*) Revisions to COMAR 26.11.01.04C(2).

(*2*) Revisions to the following provisions of COMAR 26.11.10: Paragraphs .02A., .02B(2), .02B(3), .03A(2)(a) through (c), .03A(2)(e), .03B [introductory paragraph], .03B(5) [formerly cited as .03B(6)], .04B(2) introductory paragraph [combined with provision formerly cited as .04B(2)(a)], .04B(2)(c)(i) and .04B(2)(c)(ii) [formerly cited as .04B(2)(e)(i) and .04B(2)(e)(ii) respectively], .04B(2)(f), .04B(3) through(5), and.05.

(*3*) Removal of the following provisions: COMAR 26.11.10.01B(1) [existing provision .01B(2) is renumbered as .01B(1)], .03B(1) [existing provisions .03B(2) through(5) are renumbered as .03B(1) through (4)], .03B(7), .03B(8), .03C, .03D, .04A(2) and .04A(3) [existing provision .04A(1) is renumbered as .04A], .04B(2)(b), and .04B(2)(h) [existing provisions .04B(2)(c) through (g) and (i) are renumbered as .04B(2)(a) through (f)].

(*4*) Addition of COMAR 26.11.10.01B(2) and new .03C.

(*5*) Technical Memorandum 91–01, Supplement 3—Test Methods 1004, 1004F, 1004G, 1004H, and 1004I.

(E) Revisions to COMAR 26.11.10.03C(1) [formerly cited as .03C], and the addition of Paragraphs .03C(2) and .03C(3); effective October 2, 2000.

(ii) Additional Materials—Remainder of the state submittals pertaining to the revisions listed in paragraph (c)(153) (i) of this section.

[FR Doc. 01–22366 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301160; FRL–6797–3]

RIN 2070–AB78

Fluazinam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluazinam in or on peanuts and potatoes. ISK Biosciences Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 7, 2001. Objections and requests for hearings, identified by docket control number OPP–301160, must be received by EPA on or before November 6, 2001.

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–301160 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: *giles-parker.cynthia@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	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/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301160. 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 December 6, 2000 (65 FR 76253) (FRL–6573–7), 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 ISK Biosciences Corporation, 5970 Heisley Road, Suite 200, Mentor, Ohio, 44060. This notice included a summary of the petition prepared by ISK Biosciences Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide fluazinam, 3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine, in or on peanuts and potatoes at 0.02 part per million (ppm).

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

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 fluazinam on peanuts and potatoes at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fluazinam are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—TOXICOLOGICAL PROFILE OF FLUAZINAM TECHNICAL

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rats	NOAEL: Males = 3.8 mg/kg/day; Females = 4.3 mg/kg/day

TABLE 1.—TOXICOLOGICAL PROFILE OF FLUAZINAM TECHNICAL—Continued

Guideline No.	Study Type	Results
		LOAEL Males = 38 mg/kg/day; Females = 44 mg/kg/day based on increased liver weights and liver histopathology in males, and increased lung and uterus weights in females.
870.3150	90–Day oral toxicity dogs	NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on retinal effects, increased relative liver weight, liver histopathology and possible increased serum alkaline phosphatase in females and possible marginal vacuolation of the cerebral white matter (equivocal)
870.3200	21–Day dermal toxicity rats	Systemic NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on increased AST and cholesterol levels in clinical chemistry determinations (males) Dermal NOAEL = not identified LOAEL = 10 mg/kg/day based on erythema, acanthosis, and dermatitis
870.3250	90–Day dermal toxicity	Not Available
870.3465	90–Day inhalation toxicity	Not Available
870.3700	Prenatal developmental toxicity rats	Maternal NOAEL = 50 mg/kg/day LOAEL = 250 mg/kg/day based on decreased body weight gain and food consumption and increased water consumption and urogenital staining Developmental NOAEL = 50 mg/kg/day LOAEL = 250 mg/kg/day based on decreased fetal body weights and placental weights, increased facial/cleft palates, diaphragmatic hernia, and delayed ossification in several bone types, greenish amniotic fluid and possible increased late resorptions and postimplantation loss
870.3700	Prenatal developmental toxicity rabbits	Maternal NOAEL = 4 mg/kg/day LOAEL = 7 mg/kg/day based on decreased food consumption and increased liver histopathology. Developmental NOAEL = 7 mg/kg/day LOAEL = 12 mg/kg/day based on an increase in total litter resorptions and possible fetal skeletal abnormalities
870.3700	Prenatal developmental toxicity rabbits	Maternal NOAEL = 3 mg/kg/day LOAEL = not identified (>3 mg/kg/day) Developmental NOAEL = 3 mg/kg/day LOAEL = not identified (>3 mg/kg/day)
870.3800	Reproduction and fertility effects rats	Parental/Systemic NOAEL = 1.9 mg/kg/day LOAEL = 9.7 mg/kg/day based on liver pathology in F_1 males Reproductive NOAEL = 10.6 mg/kg/day LOAEL = 53.6 mg/kg/day based on decreased number of implantation sites and decreased litter sizes to day 4 postpartum for F_1 females (F_2 litters). Offspring NOAEL = 8.4 mg/kg/day LOAEL = 42.1 mg/kg/day based on reduced F_1 and F_2 pup body weight gains during lactation.
870.4100	Chronic toxicity rats	NOAEL = Males: 1.9 mg/kg/day; Females: 4.9 mg/kg/day LOAEL = Males: 3.9 mg/kg/day; Females: not identified (>4.9 mg/kg/day) based on increased testicular atrophy in males and no effects in females
870.4100	Chronic toxicity dogs	NOAEL = 1 mg/kg/day LOAEL = 10 mg/kg/day based on gastric lymphoid hyperplasia in both sexes and nasal dryness in females
870.4300	Combined chronictoxicity/carcinogenicity rats	NOAEL = Males: 0.38 mg/kg/day; Females: 0.47 mg/kg/day LOAEL = Males: 3.8 mg/kg/day; Females: 4.9 mg/kg/day based on liver toxicity in both sexes, pancreatic exocrine atrophy in females and testicular atrophy in males. Some evidence of carcinogenicity (thyroid gland follicular cell tumors) in male rats, but not in females.
870.4200	Carcinogenicity mice	NOAEL = Males:1.1 mg/kg/day; Females: 1.2 mg/kg/day

TABLE 1.—TOXICOLOGICAL PROFILE OF FLUAZINAM TECHNICAL—Continued

Guideline No.	Study Type	Results
		LOAEL = Males: 10.7 mg/kg/day; Females: 11.7 mg/kg/day based on increased incidences of brown macrophages in the liver of both sexes, eosinophilic vacuolated hepatocytes in males, and increased liver weight in females Clear evidence of carcinogenicity (hepatocellular tumors) in male mice, but not in females
870.4200	Carcinogenicity mice	NOAEL = Males:<126 mg/kg/day, Females: <162 mg/kg/day LOAEL = Males: 126 mg/kg/day; Females: 162 mg/kg/day based on increased liver weights and liver and brain histopathology in both sexes Equivocal/some evidence of carcinogenicity (hepatocellular tumors) in male mice, but not in females
870.5100	Bacterial reverse mutation assay (Ames test)	Negative with and without S9 up to cytotoxic concentrations.
870.5100	Bacterial reverse mutation assay (Ames test)	Negative with and without S9 up to cytotoxic concentrations.
870.5300	*In vitro* mammalian gene mutation assay	Negative with S9 activation up to 9 μg/ml. Negative without S9 activation up to 0.3 μg/ml. Compound tested to cytotoxic concentrations.
870.5300	*In vitro* mammalian gene mutation assay	Negative with and without S9 activation up to 5 μg/ml. Compound tested to cytotoxic concentrations.
870.5375	*In vitro* mammalian chromosome aberration (CHL cells)	Negative with and without S9 up to cytotoxic concentrations. Cells harvested at 24 and 48 hours in nonactivated studies and at 24 hours in activated studies.
870.5395	Mammalian erythrocyte micronucleus test	Negative at 24 hour sacrifice (500, 1,000, 2,000 mg/kg). Negative at 24, 48, and 72 hour sacrifices (2,000 mg/kg).
870.5550	UDS in primary rat hepatocytes	Negative; however there were several serious study deficiencies: treatment time shorter than recommended, no data supporting the claim of cytotoxicity, data variability for major endpoints.
870.5550	Differential killing/growth inhibition in *B. subtilis*	Negative, however only one replicate plate/dose was used.
870.6200	Acute neurotoxicity screening battery rats	Systemic NOAEL = 50 mg/kg LOAEL = 1,000 mg/kg based on soft stools and decreased motor activity on day of dosing. Neurotoxicity NOAEL = 2,000 mg/kg LOAEL = not identified (>2,000 mg/kg)
870.6200	Subchronic neurotoxicity screening battery rats	Neurotoxicity NOAEL = Males: 233 mg/kg/day; Females: 280 mg/kg/day LOAEL = not identified (Males: >233 mg/kg/day; Females: > 280 mg/kg/day)
870.6300	Developmental neurotoxicity	Not Available
870.7485	Metabolism and pharmacokinetics rats	Only 33–40% of the administered dose was absorbed. Most of the administered dose was recovered in the feces (>89%). Excretion via the urine was minor (<4%). Total biliary radioactivity, however, represented 25–34% of the administered dose, indicating considerable enterohepatic circulation.
870.7600	Dermal penetration	Not Available
Special studies:	4-Week dietary (Range-finding) rats	NOAEL = Males: 5.1 mg/kg/day; Females: 5.3 mg/kg/day LOAEL = Males: 26.4 mg/kg/day; Females: 25.9 mg/kg/day based on decreased body weight gain and food consumption, increased serum phospholipids, increased total cholesterol, increased relative liver weights, and liver histopathology.
	4-Week dietary (Range-finding) mice	NOAEL = Males: 7.6 mg/kg/day; Females: 8.2 mg/kg/day LOAEL = Males: 36 mg/kg/day; Females: 43 mg/kg/day based on decreased body weight gain, increased serum glucose, increased kidney weights.

TABLE 1.—TOXICOLOGICAL PROFILE OF FLUAZINAM TECHNICAL—Continued

Guideline No.	Study Type	Results
	4-Week dietary (Range-finding) mice	NOAEL = not identified (Males; <555 mg/kg/day; Females: <658 mg/kg/day) LOAEL = Males: 555 mg/kg/day; Females: 658 mg/kg/day based on vacuolation of white matter in brain, increased liver weights, histopathology in liver.
	90-Day dietary (Special liver study) rats	NOAEL = not determined (Males: <37.6 mg/kg/day, Females: <44.7 mg/kg/day) LOAEL = Males: 37.6 mg/kg/day, Females: 44.7 mg/kg/day based on increased relative liver weights and liver histopathology.
	11–Week oral toxicity (Special retinal study) dogs	NOAEL/LOAEL not determined.
	7-Day inhalation toxicity rats (Test Material: Frowncide WP (51.9% a.i.))	NOAEL = Males: 1.38 mg/kg/day; Females: 1.49 mg/kg/day LOAEL = Males: 3.97 mg/kg/day; Females: 4.25 mg/kg/day based on increased testes weight (males) and increased liver weight (females).
	Developmental toxicity (range-finding) rats	Maternal and developmental NOAELS and LOAELS were not assigned.
	Eight special mechanistic studies to assess the CNS white matter vacuolation	White matter vacuolation in the CNS of mice, rats, and dogs was found to be due to Impurity-5.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fluazinam used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUAZINAM FOR USE IN HUMAN RISK ASSESSMENTS[1]

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50 years of age	Developmental NOAEL = 7 mg/kg/day; UF = 100; Acute RfD = 0.07 mg/kg/day	FQPA SF = 10; aPAD = acute RfD/FQPA SF = 0.007 mg/kg/day	Developmental toxicity, rabbits. Developmental LOAEL = 12 mg/kg/day based on increased incidence of total litter resorptions and possibly increased incidence of fetal skeletal abnormalities.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUAZINAM FOR USE IN HUMAN RISK ASSESSMENTS[1]—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children	NOAEL = 50 mg/kg/day UF = 100; Acute RfD = 0.50 mg/kg/day	FQPA SF = 3; aPAD = acute RfD/FQPA SF = 0.167 mg/kg/day	Acute neurotoxicity, rats. LOAEL = 1,000 mg/kg/day based on decreased motor activity and soft stools on day of dosing.
Chronic Dietary all populations	NOAEL= 1.1 mg/kg/day UF = 100; Chronic RfD = 0.011 mg/kg/day	FQPA SF = 3; cPAD = chronic RfD/FQPA SF = 0.00367 mg/kg/day	Carcinogenicity, mice. LOAEL = 10.7 mg/kg/day based on liver histopathology and increased liver weight.
Cancer (oral, dermal, inhalation)	Suggestive evidence of carcino-genicity, but not sufficient to assess human carcinogenic potential[2]	Quantification of human cancer risk not required.[2]	Increases in thyroid gland follicular cell tumors in male rats; increases in hepatocellular (liver) tumors in male mice.[2]

* The reference to the FQPA Safety Factor refers to any safety factor retained or reduced due to concerns unique to the FQPA.
[1] UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic), RfD = reference dose, LOC = level of concern, MOE = margin of exposure
[2,]Cancer Assessment Document - Evaluation of the Carcinogenic Potential of Fluazinam, March 29, 2001, HED Doc. No. 014512.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established for the residues of fluazinam. Risk assessments were conducted by EPA to assess dietary exposures from fluazinam in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A DEEM acute dietary exposure analysis was performed using tolerance residue levels and 100% CT data for all commodities (Tier 1). The DEEM defaults were used for all processing factors.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A DEEM chronic dietary exposure analysis was performed using tolerance residue levels and 100% CT data for all commodities (Tier 1). The DEEM defaults were used for all processing factors.

iii. *Cancer.* Since fluazinam has been classified as Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential, an exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fluazinam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fluazinam.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of reference dose (%RfD) or percent of adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fluazinam they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of fluazinam for acute exposures are estimated to be 18.0 parts per billion (ppb) for surface water and 0.10 ppb for ground water. The EECs for chronic exposures are estimated to be 3.15 ppb for surface water and 0.10 ppb for ground water.

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).

Fluazinam is 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 fluazinam has 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, fluazinam 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 fluazinam 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

1. *Safety factor for infants and children*—i. *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 database 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.

ii. *Prenatal and postnatal sensitivity*. Qualitative evidence of increased susceptibility of fetuses to fluazinam was demonstrated in a developmental toxicity study in rats. Increased incidences of facial/palate clefts and other rare deformities in the fetuses were observed in the presence of minimal maternal toxicity. In a developmental toxicity study in rabbits and in a 2-generation reproduction study in rats, neither quantitative nor qualitative evidence of increased susceptibility of fetuses or pups to fluazinam was observed. Because of the neurotoxic lesion observed in the white matter of the brain in mice, dogs and rats and the qualitative evidence of increased susceptibility of rat fetuses to fluazinam, a developmental neurotoxicity study will be required to be submitted to the Agency. Further, because of the lack of a developmental neurotoxicity study and the qualitative evidence of increased susceptibility of rat fetuses to fluazinam, the Food Quality Protection Act (FQPA) safety factor (SF) for protection of infants and children, as required by the FQPA of 1996, will be retained at 10X when assessing acute dietary exposure for ''females 13–50 years of age'' due to concern for the developing fetus. Additionally, the FQPA SF will be reduced to 3X when assessing exposures for all populations for all exposure durations (acute and chronic) because of uncertainty resulting from lack of a developmental neurotoxicity study.

iii. *Conclusion*. Because of the lack of a developmental neurotoxicity study and the qualitative evidence of increased susceptibility of rat fetuses to fluazinam, the Agency determined that the FQPA safety factor should be retained at 10X when assessing acute dietary exposure for ''females 13–50 years of age'' since, in addition to the need for a developmental neurotoxicity study, increased susceptibility of rat fetuses was observed following *in utero* exposure in the rat developmental toxicity study resulting in concern for the developing fetus. The Agency also determined that the FQPA safety factor should be reduced to 3X when assessing exposure for ''all populations'' for all exposure durations (acute and chronic) since there is uncertainty due to the lack of a developmental neurotoxicity study. This study will further characterize the toxicity of fluazinam and may provide endpoints and NOAELs that could be used in risk assessments for any subpopulation/exposure duration.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure to fluazinam from food will occupy <1% of the aPAD for the U.S. population, 2% of the aPAD for the

most highly exposed population subgroup, females 13–50 years old. All other population subgroups occupy <1% of the aPAD. In addition, there is potential for acute dietary exposure to fluazinam in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUAZINAM

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.17	<1%	18	0.10	5,900
Adult Male 20+ yrs	0.17	<1%	18	0.10	5,900
Adult Female 13ndash;50 yrs	0.007	2%	18	0.10	210
Children 1–6 yr	0.17	<1%	18	0.10	1,700

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluazinam from food will utilize 8% of the cPAD for the U.S. population and 11% of the cPAD for the most highly exposed population subgroup, females 13–50 years old. There are no residential uses for fluazinam that result in chronic residential exposure to fluazinam. There is potential for chronic dietary exposure to fluazinam in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUAZINAM

Population Subgroup	cPAD mg/kg/day	%cPAD Food	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0037	8	3.15	0.10	120
Adult Male 13–19 yrs	0.0037	<1	3.15	0.10	130
Adult Female 13–50 yrs	0.0037	11	3.15	0.10	99
Children 1–6 yrs	0.0037	1	3.15	0.10	37

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).

Fluazinam is 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).

Fluazinam is 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.

5. *Aggregate cancer risk for U.S. population*. In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999), the Agency classified fluazinam into the category Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential based on the following weight-of-the-evidence considerations:

i. There was some evidence in that fluazinam induced an increase in thyroid gland follicular cell tumors in male rats, but not in female rats. In one study in mice, there was clear evidence that an increased incidence of hepatocellular tumors observed in the male mice was treatment-related. In another study in mice, there was equivocal/some evidence that fluazinam may have induced an increase in hepatocellular tumors in the male mice. Increases in hepatocellular tumors observed in the female mice in the latter study were not statistically significant and some occurred at an excessively toxic dose level. The thyroid gland follicular cell tumors of concern were seen only in male rats and the hepatocellular tumors of concern were seen only in male mice.

ii. Fluazinam was negative in mutagenicity assays.

Based on the 1999 draft Agency Cancer Risk Assessment Guidelines, the classification of suggestive evidence of carcinogenicity a dose-response assessment is not indicated (i.e. no Q*, no MOE) therefore, sufficient protection is afforded by the RFD approach so a risk assessment was not performed.

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 fluazinam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

For fluazinam, the gas chromatography/electron capture detection (GC/ECD) methods are adequate for collecting data on residues of fluazinam per se in/on peanuts and potatoes and have a validated limit of quantitation of 0.01 ppm in/on all associated plant matrices. The method has been adequately radiovalidated, and has undergone a successful ILV trial in conjunction with the time-limited tolerance petition for use on peanuts. The method has been forwarded to the Analytical Chemistry Branch (ACB) for a petition method validation to determine if it is suitable as an enforcement method. ACB has determined that the method is suitable for collecting pesticide residue monitoring data and food tolerance enforcement of fluazinam in/on peanut nutmeat.

This method is currently being validated by the Analytical Chemistry Branch Laboratories, BEAD (7503C),

Office of Pesticide Programs. Upon successful completion of the EPA validation and the granting of this registration, the method will be forwarded to FDA for publication in a future revision of the Pesticide Analytical Manual, Vol-II (PAM-II). Prior to publication and upon request, the method will be available prior to the harvest season from the Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Ft. George C. Meade, MD 20755–5350. Contact Francis D. Griffith, Jr., telephone (410) 305–2905, e-mail: griffith.francis @epa.gov. The analytical standards are also available from the EPA National Pesticide Standard Repository at the same location.

B. International Residue Limits

There are currently no Codex maximum residue levels established for residues of fluazinam on any crop.

C. Conditions

1. *Toxicology*. The toxicological database for fluazinam is adequate at this time to support the requested registration and tolerances according to Subdivision F Guideline requirements and 40 CFR 158.690. The Agency has determined that there is a high degree of confidence in the hazard endpoints and dose-response assessments conducted for this chemical. However, the Agency is requiring that the following additional toxicology studies be performed and submitted within a reasonable period of time in order to more clearly and fully characterize the toxicity of this chemical.

- 870.3465 28-Day inhalation toxicity in rats.
- 870.6300 Developmental neurotoxicity study in rats. Test material to be technical grade fluazinam containing the maximum level of Impurity-5 permitted in the current specification for technical grade fluazinam. The protocol should be submitted to EPA for comment before the start of the study and should include full neurohistopathological examination of dams.
- 870.6200 Subchronic neurotoxicity screening battery in rats (conditional requirement). Based on a consideration of the results in the developmental neurotoxicity study in rats required above (870.6300), the Agency will subsequently recommend whether a repeat of the subchronic neurotoxicity study in rats (870.6200) should also be required to support the registration of fluazinam.

2. *Residue chemistry*. The submitted potato processing studies did not include quantifiable residues in the RAC samples. However, the tests were conducted at only 2.6–2.8X the proposed maximum rate instead of the required 5X rate, the maximum theoretical concentration factor for potatoes. Despite these factors, the Agency has concluded that it is unlikely that residues in processed potatoes will exceed the 0.02 ppm RAC tolerance based on the level of parent compound in the raw tuber being about 0.001 ppm in the plant metabolism study. However, for confirmatory purposes, the Agency is requiring the registrant to submit the following study as a condition of registration:

- 860.1850 Residue Chemistry. Potato processed commodity study at a higher treatment level of 5X).

V. Conclusion

Therefore, the tolerance is established for residues of fluazinam, 3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine, in or on peanuts and potatoes at 0.02 ppm.

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–301160 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 November 6, 2001.

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–301160, 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). 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 other 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: August 9, 2001.

Anne E. Linday,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.574 is added to read as follows:

§ 180.574 Fluazinam; tolerances for residues.

(a) *General.* Tolerances are established for residues of fluazinam, (3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine) in or on the following commodities:

Commodity	Parts per million
Peanuts	0.02
Potatoes	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 01–22525 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–S

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation (NSF) is amending its regulations to designate two additional Antarctic Specially Protected Areas (ASPAs) and to correct some typographical errors. These regulations, pursuant to the Antarctic Conservation Act of 1978, as amended, are being revised to reflect recommendations adopted by the Antarctic Treaty parties at the 15th and 21st Antarctic Treaty Consultative Meeting.

DATES: Effective September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

SUPPLEMENTARY INFORMATION: The Antarctic Conservation Act of 1978, as amended, (''ACA'') (16 U.S.C. 2401 *et seq.*) implements the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol''). Annex II of the Protocol contains provisions for conservation of native Antarctic plants and animals. Annex V contains provisions for the protection of specially designated areas. Section 6 of the ACA, (16 U.S.C. 2405), as amended, directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement Annexes II and V to the Protocol.

The Antarctic Treaty Parties periodically adopt measures to establish additional specially protected areas. At the 15th Antarctic Treaty Consultative Meeting (ATCM) held in Rio de Janeiro in 1987, the Parties adopted Recommendation XIV–5 that added as a specially protected area the Summit of Mt. Melbourne, North Victoria Land. This site was previously included in the list of specially protected areas in 45 CFR part 670. However, in the 1998 amendments to 45 CFR part 670 [63 FR 50164 (September 21, 1998)], the site was inadvertently omitted from the list. At the 21st ATCM in Christchurch, New Zealand in 1997, the Parties adopted Measure 3 (1997) that added as a specially protected area Botany Bay, Cape Geology, Victoria Land. The rule is being revised to add these two specially protected areas. No public comment is needed because the addition of these two sites merely implements measures adopted at the ATCM.

Finally, these amendments correct typographical errors in the names of several species designated as native birds in § 670.20, and one species designated as a specially protected species in § 670.25.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Management and Budget. This rule involves a foreign affairs function of the United States and is, therefore, exempt from the notice requirements of section 553 of the Administrative Procedures Act and from regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this rule is exempt from the Regulatory Flexibility Act, it has nonetheless been determined that this rule will not have a significant impact on a substantial number of small businesses. For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), these amendments to the existing regulations do not change the collection of information requirements contained in NSF's existing regulations, which have already have been approved by the Office of Management and Budget (OMB No. 3145–0034). Finally, NSF has reviewed this rule in light of section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Reporting and recordkeeping requirements, Wildlife.

Dated: August 29, 2001.

Lawrence Rudolph,

General Counsel, National Science Foundation.

Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR part 670 as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

2. Section 670.20 is revised to read as follows:

§ 670.20 Designation of native birds.

The following are designated native birds:

Albatross

Black-browed—*Diomedea melanophris.*
Gray-headed—*Diomedea chrysostoma.*
Light-mantled sooty—*Phoebetria palpebrata.*
Wandering—*Diomedea exulans.*

Fulmar

Northern Giant—*Macronectes halli.*
Southern—*Fulmarus glacialoides.*
Southern Giant—*Macronectes giganteus.*

Gull

Southern Black-backed—*Larus dominicanus.*

Jaeger

Parasitic—*Stercorarius parasiticus.*
Pomarine—*Stercorarius pomarinsus*

Penguin

Adelie—*Pygoscelis adeliae.*
Chinstrap—*Pygoscelis antarctica.*
Emperor—*Aptenodytes forsteri.*
Gentoo—*Pygoscelis papua.*
King—*Aptenodytes patagonicus.*
Macaroni—*Eudyptes chrysolophus.*
Rockhopper—*Eudyptes crestatus.*

Petrel

Antarctic—*Thalassoica antarctica.*
Black-bellied Storm—*Fregetta tropica.*
Blue—*Halobaena caerulea.*
Gray—*Procellaria cinerea.*
Great-winged—*Pterodroma macroptera.*
Kerguelen—*Pterodroma brevirostris.*
Mottled—*Pterodroma inexpectata.*
Snow—*Pagodroma nivea.*
Soft-plumaged—*Pterodroma mollis.*
South-Georgia Diving—*Pelecanoides georgicus.*

White-bellied Storm—*Fregetta grallaria.*

White-chinned—*Procellaria aequinoctialis.*

White-headed—*Pterodroma lessoni.*

Wilson's Storm—*Oceanites oceanicus.*

Pigeon

Cape—*Daption capense.*

Pintail

South American Yellow-billed—*Anas georgica spinicauda.*

Prion

Antarctic—*Pachyptila desolata.*

Narrow-billed—*Pachyptila belcheri.*

Shag

Blue-eyed—*Phalacrocorax atriceps.*

Shearwater

Sooty—*Puffinus griseus.*

Skua

Brown—*Catharacta lonnbergi*

South Polar—*Catharacta maccormicki.*

Swallow

Barn—*Hirundo rustica.*

Sheathbill

American—*Chionis alba.*

Tern

Antarctic—*Sterna vittata.*

Arctic—*Sterna paradisaea.*

§ 670.25 [Amended]

3.In § 670.25, remove the word ''rossi'' and add, in its place, the word ''*rossii*''.

§ 670.29 [Amended]

4. In § 670.29, add two additional ASPAs at the end of the section as follows:

* * * * *

ASPA 159, Summit of Mt. Melbourne, North Victoria Land.

ASAP 160, Botany Bay, Cape Geology, Victoria Land.

[FR Doc. 01–22533 Filed 9–6–01; 8:45 am]

BILLING CODE 7555–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010719181–1181–01; I.D. 062501A]

RIN 0648–AP35

Antarctic Marine Living Resources; Harvesting and Dealer Permits, and Catch Documentation

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

ACTION: Interpretive rule.

SUMMARY: NMFS issues a rule clarifying NMFS' interpretation of the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA) which prohibits the import into the United States of *Dissostichus eleginoides* (Patagonian toothfish), *Dissostichus mawsoni*(Antarctic toothfish), and products from such fish harvested in violation of a conservation measure in force with respect to the United States. NMFS interprets this prohibition as applying to Patagonian and Antarctic toothfish and products from such fish, even if such fish or products are accompanied by a validated Dissostichus Catch Document (DCD), if the fish were harvested in violation of a conservation measure in force with respect to the United States. NMFS issues this interpretative rule because of recent requests for permits from U.S. importers wishing to receive toothfish that were harvested in violation of a conservation measure in force with respect to the United States, seized by a foreign law enforcement authority, and accompanied by DCDs validated by the country that seized the fish. The intent of this interpretation is to clarify that under United States law, such fish cannot be imported into the United States.

DATES: This rule is effective September 7, 2001.

ADDRESSES: Copies of the Regulatory Impact Review supporting this action may be obtained from Dean Swanson or Mark Wildman, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson or Mark Wildman at 301–713–2276.

SUPPLEMENTARY INFORMATION: The Antarctic fisheries are managed in accordance with the Convention on the Conservation of Antarctic Marine Living Resources (Convention). Under the authority of the AMLRCA, 16 U.S.C. 2431 *et seq.*, NMFS implements conservation measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) through regulations at 50 CFR part 300, subpart G. In accordance with CCAMLR's requirements, the Secretary of the Department of Commerce (Secretary) has implemented a Catch Documentation Scheme (CDS) for Patagonian and Antarctic toothfish, which requires that shipments of such product be accompanied by validated documentation. At CCAMLR's October/November 2000 annual meeting, CCAMLR discussed the difficulties experienced by some Member countries that had seized or confiscated a catch or shipment of Patagonian or Antarctic toothfish and wished to export it to another country. CCAMLR considered a proposal that would have allowed a Member country that had seized toothfish to issue a new ''DCD'' and sell the fish in the international market. However, there was insufficient support to adopt that proposal, and CCAMLR agreed to discuss the proposal further. Since last November, the United States has received requests for permits from importers wishing to receive illegally harvested toothfish accompanied by DCDs validated by the countries that seized such fish.

The purpose of the AMLRCA is to provide legislative authority for implementation of the Convention. (16 U.S.C. 2431(b)). The AMLRCA states that it is illegal for any person to ''ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of any antarctic living marine resource (or part or product thereof) which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States . . . .'' (16 U.S.C. 2435 (3)). Neither the Convention nor any of CCAMLR's conservation measures currently contains a provision for ''cleansing'' illegally harvested toothfish. Thus, in light of the explicit statutory prohibition and the lack of international agreements to the contrary, NMFS interprets U.S. law to prohibit the import of illegally harvested, seized fish even if it is accompanied by a validated DCD. The fact that the fish has been seized by a foreign law enforcement authority and that it is accompanied by a DCD issued by the country that seized the fish, does not change the fact that the fish was harvested in violation of a conservation

measure. Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this interpretive rule is not significant.

Dated: August 30, 2001.

John Oliver

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–22553 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 174
Friday, September 7, 2001

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

DEPARTMENT OF ENERGY

10 CFR Part 852

RIN 1901–AA90

Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing procedures to implement Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 under which a DOE contractor employee or the employee's estate can seek assistance from the DOE Program Office in filing a claim with the appropriate State workers' compensation system based on an illness or death caused by exposure to a toxic substance during the course of employment at a DOE facility. These procedures deal with how: An individual may submit an application to the Program Office for review and assistance; the Program Office determines whether to submit an application to a physicians panel; physicians panels determine whether the illness or death of a DOE contract employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility; the Program Office accepts or rejects a determination by a physicians panel; and appeals may be undertaken.

DATES: Submit written comments on or before October 9, 2001 to the address listed under the **ADDRESSES** section. You may present oral views, data, and arguments at the public hearing, which will be held in Washington, DC, at the address listed under the **ADDRESSES** section beginning at 9 a.m. eastern daylight time on September 24, 2001. DOE must receive requests to speak at the public hearing and a copy of your statements no later than 4 p.m., September 14, 2001. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking.

ADDRESSES: Send three (3) copies of written comments and your prepared statements for the public hearing to Ms. Loretta Young, Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, Attention: Physicians Panel Rule.

A public hearing will be held at the following address: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–245, Washington, DC.

You may read and copy written comments received by DOE, the public hearing transcript, and any other docket material at the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Young, telephone: 202–586–2819; fax: 202–586–6010; e-mail: *loretta.young@eh.doe.gov;* address: Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Energy Employees Occupational Illness Compensation Program Act of 2000 (''Act'') (Pub. L. No. 106–398, 42 U.S.C. 7384, *et seq*) establishes a program for compensating covered workers made ill during nuclear weapons production for DOE. Covered workers with certain illnesses, including chronic beryllium disease, radiation-induced cancers, and silicosis, may be eligible for specified benefits under the program. Executive Order 13179 (65 FR 77487, December 7, 2000) assigns the Department of Labor primary responsibility for this program.

While not eligible for Federal compensation under EEOICPA, workers with other illnesses that may be related to workplace toxic exposures may qualify and apply for compensation through their respective State workers' compensation systems. Subtitle D of the Act authorizes the Secretary of Energy to enter into an agreement with each State to provide assistance to a DOE contractor employee in filing a claim under that State's workers' compensation system. After DOE enters into such an agreement with a State, an applicant can submit an application to the Program Office in DOE for assistance in filing a claim with that State's workers' compensation system. If the application comes within the terms and conditions of the relevant State Agreement and contains reasonable evidence that the illness or death of a covered employee may be related to employment at a DOE facility, then DOE must submit the application to a physicians panel established under the Act to determine the validity of the applicant's claim. Under the Act, DOE specifies the number of physicians panels required, the number of physicians per panel, and each panel's jurisdiction, while the Secretary of Health and Human Services appoints the members of the physicians panels. Section 3661(d) of Subtitle D of the Act provides that a physicians panel must make its determination ''under guidelines established by the Secretary [of Energy], by regulation.'' If a physicians panel makes a positive determination and the Program Office accepts it, then the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system. In addition, DOE may not contest the claim or any award

made regarding the claim and, to the extent permitted by law, may direct a DOE contractor not to contest the claim or award. Furthermore, any costs of contesting the claim or award is not an allowable cost under a DOE contract.

The proposed procedures are consistent with existing DOE Notice 350.6 that sets forth Departmental policy to pay all valid State workers' compensation claims. DOE Notice 350.6 provides for the expeditious validation of claims that meet the criteria for compensation under a State workers' compensation system. The proposed procedures would achieve the same result.

The linkage to the criteria for compensation under a State workers' compensation system is consistent with the structure of the Act. Specifically, Subtitle D of the Act authorizes DOE to assist a worker in filing a claim under the appropriate State workers' compensation system. DOE does not interpret Subtitle D as calling for federalizing the operation of State workers compensation standards. Rather, Subtitle D is intended to ensure that DOE will assist and not hinder the processing of valid claims under a State workers' compensation system.

II. Discussion of Proposed Rule

A. What Is the Purpose of This Proposed Rule?

The proposed rule establishes procedures for implementing Subtitle D of the Act. Proposed section 852.1(a) provides that these regulations address how (1) an individual may submit an application to the Program Office for review and assistance, (2) the Program Office determines whether to submit an application to a physician panel, (3) physicians panels determine whether the illness or death of a DOE contract employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility, (4) the Program Office accepts or rejects a determination by a physicians panel, and (5) appeals may be undertaken.

B. What Is the Scope of This Proposed Rule?

Proposed section 852.1(b) makes clear that the procedures only cover applications that meet three conditions. First, the application must be based on the illness or death of a DOE contractor employee. Second, the illness or death must be caused by exposure to a toxic substance. And third, the exposure must have occurred during the course of employment at a DOE facility.

Consistent with the statutory emphasis on State Agreements as a precondition for action under Subtitle D of the Act, proposed section 852.1(c) provides that all actions under the procedures must be pursuant to a relevant State Agreement and consistent with its terms and conditions.

C. What Definitions Are Used in This Proposed Rule?

This proposed rule contains definitions of ''Act'', ''Applicant'', ''DOE'', ''DOE Contractor Employee'', ''DOE Facility'', ''Program Office'', ''Physicians Panel'', ''State Agreement'', and ''Toxic Substance''.

D. What Is the Act?

The Act is the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

E. Who Is an Applicant?

An applicant is a DOE contractor employee or the employee's estate seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system.

F. Who Is a DOE Contractor Employee?

Proposed section 852.2 defines a DOE contractor employee to be a ''Department of Energy contractor employee'' as defined by section 3621(11) of the Act. The statutory definition focuses on employment by a DOE contractor at a DOE facility and establishes one of the subsets of employees eligible for the DOL program. Thus, the term ''DOE contractor employee'' does not include all those employees eligible for the DOL program. For example, it does not include atomic weapon employees who were not employed by a DOE contractor at a DOE facility. In addition, it does not include Federal employees.

G. What Is a DOE Facility?

Proposed section 852.2 defines ''DOE facility'' to be a ''Department of Energy facility'' as defined by section 3621(12) of the Act. DOE has published a list of facilities it considers to be Department of Energy facilities for purposes of the Act. (66 FR 4003, January 17, 2001; revised 66 FR 31218, June 11, 2001). DOE took a broad view of what constitutes a Department of Energy facility in compiling this list and solicits comments as to whether this broad view is appropriate for implementing Subtitle D of the Act.

H. What Is the Program Office?

The Program Office is the DOE Office of Worker Advocacy or any other DOE office subsequently designated by the Secretary of Energy. The Program Office exercises most of the functions of the Secretary of Energy under Subtitle D of the Act.

I. What Is a Physicians Panel?

Physicians panels are appointed by the Secretary of Health and Human Services in response to requests by DOE pursuant to Subtitle D of the Act. Physicians panels provide DOE with impartial and independent determinations as to whether the illness or death of a DOE contractor worker arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility. Physicians panels may be asked to review new applications that have not undergone prior physicians panel review, or to re-examine applications that have already undergone physicians panel review.

J. What Is a State Agreement?

Proposed section 852.2 defines ''State Agreement'' as an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Subtitle D of the Act in filing a claim with the State's workers' compensation system. The existence of a State Agreement with a particular State is a condition precedent for any action by the Program Office on an application for assistance in filing a claim with that State's workers compensation system. Once in effect, a State Agreement sets the parameters within which the Program Office can take action with respect to an application.

K. What Provisions Does a State Agreement Contain?

Proposed section 852.6 provides for three standard provisions in State Agreements which are subject to negotiation. First, a State will identify the applicable criteria used to determine the validity of a workers' compensation claim under State law and describe how those criteria are applied in a State worker's compensation proceeding. Second, only those applications that satisfy the identified applicable criteria law will be submitted to a physicians panel. And third, the Program Office will provide assistance to only those applications that meet the identified applicable criteria.

The standard provisions indicate that DOE will rely on State standards for screening applications prior to submission to physicians panels for a causation determination. DOE has considered prescribing Federal standards without regard to State law,

and proposes not to do so for a variety of reasons. First, the text of the Act does not require DOE to prescribe such standards. Second, in the absence of statutory text and legislative history to the contrary, DOE construes the purpose of the Act to be provision of DOE assistance to contractor employees or their estates to enable them to qualify for compensation under State law. Third, there is nothing in the text of the Act or its legislative history indicating that Congress intended to bypass State law or to provide for affirmative physician panel determinations that may not have any operative impact because of State law. Although the Act provides for DOE to deny reimbursement of contractor litigation expenses in defense of claims for which there are affirmative physician panel determinations, that provision would have no impact in circumstances where the contractor's defense is in the hands of an insurance company. DOE invites comments on its proposal to rely on State standards to screen applications for assistance. DOE also solicits comments as to what other provisions should be included in State Agreements. For example, should a State Agreement contain a provision under which the State would consider the opinion of a physicians panel on medical issues and, if appropriate, delay State proceedings in order to obtain such an opinion?

L. What Is a Toxic Substance?

Proposed section 852.2 defines ''toxic substance'' as any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature. This is a relatively broad definition of the term, which could be interpreted to encompass not only toxic chemicals, but also infectious agents and external radiation sources. However, this definition does not include all workplace conditions that might cause illness or death. For example, workplace noise is not considered a toxic substance and thus hearing loss resulting from exposure to workplace noise could not provide a basis for an application for assistance under Subtitle D of the Act. An example of a narrower definition of ''toxic substance'' would be, ''any chemical or compound capable of causing illness as a result of exposure.'' DOE solicits comments on its definition, including whether ''toxic substance'' should be defined more precisely.

M. How Does an Individual Obtain and Submit an Application for Review and Assistance?

Proposed section 852.3 defines how an individual obtains and submits an application for review and assistance. An application can be obtained in person from the Program Office, from any Resource Center, and from any DOE-sponsored Former Worker Program. There are currently approximately one dozen Former Worker Programs throughout the U.S. The Former Worker Programs currently offer screening examinations for the detection of occupational illnesses for individuals formerly employed at some but not all DOE facilities. An application can also be obtained by mail or telephone request to the Program Office, or, in a printable format, from the Program Office's web site.

Proposed section 852.3 also describes how an application is submitted. An application can be submitted in person to the Program Office, to any Resource Center, or to any DOE-sponsored Former Worker Program, where staff will be available to answer questions and assist the individual in filling out the application. An application can also be submitted by mail to the Program Office.

Proposed section 852.4 describes the information and materials that the individual must submit as a part of the application for physicians panel review. First, the individual must sign a request for review by a physicians panel of the individual's application for assistance. Additional information requirements flow out of Subtitle D of the Act, which requires that, in order to qualify for physicians panel review, the applicant must submit reasonable evidence that (a) the application was filed by or on behalf of a DOE contractor employee or employees estate; and (b) the illness or death of the employee may have been related to employment at a DOE facility. In order to assure that the Program Office has sufficient information to determine whether an individual meets these eligibility criteria, and in order to provide a physicians panel with sufficient information to make a causation determination on an application, the applicant is also required in proposed section 852.4, to provide (a) a signed medical release, authorizing non-DOE sources of medical information to provide the Program Office with medical records documenting the individual's diagnosis or providing an opinion as to the relationship between the applicant's medical condition and exposure to a toxic substance while employed at a DOE facility; (b) a signed release permitting the Program Office to obtain any records under the control of DOE and relevant to the individual's eligibility for the program or relevant to the physicians panel's adjudication of the application, including employment, exposure and medical records; (c) an employment history, filled out by the individual; and (d) any other information or materials deemed by the Program Office to be relevant to a determination of the individual's eligibility for the review and assistance program, or relevant to adjudication of the application by a physicians panel. As the program is implemented, the Program Office may find that it needs additional information or materials for the processing of an application for review and assistance.

N. How Does the Program Office Decide What Applications To Submit to a Physicians Panel?

Proposed section 852.5 establishes a screening mechanism by which the Program Office determines whether to submit an application to a physicians panel. Specifically, an application must contain adequate information to permit the Program Office to make a reasonable initial determination that the following three conditions are met. First, the application was filed by or on behalf of a DOE contractor employee or employee's estate. Second, the illness or death of the DOE contractor employee may have been related to employment at a DOE facility. And third, the conditions in the relevant State Agreement are or can be satisfied. DOE solicits comment on whether the proposed conditions are appropriate and what, if any, additional conditions should be used.

Proposed section 852.5 provides that the Program Office will screen applications prior to sending them to a physicians panel for a causation determination. Among other things, under the proposed rule, the Program Office may decide not to forward an application to a physicians panel at this stage because the Program Office determines that the application would not satisfy the conditions in the relevant State Agreement, including the applicable criteria used to determine the validity of a workers' compensation claim under State law. Potential criteria would include: (1) Whether the disease or condition is covered under the State workers' compensation system, (2) whether there is a prescribed time period for bringing a claim, and (3) what level and type of evidence is required to support a claim. DOE solicits comment on whether the suggested criteria are appropriate and what, if any, alternative or additional criteria should be used. In addition, DOE specifically solicits comments on whether State claims' timeliness requirements should be excluded from the screening criteria developed under this part.

DOE also seeks comment on a more limited alternative screening mechanism. This alternative would provide for the negotiation of agreements with the States to identify particular criteria that are relevant to the question, under state law, whether a particular disease caused by a toxic substance arises out of employment at a DOE facility. Under this alternative screening mechanism, the Program Office would take into consideration the relevant State criteria in determining whether an application alleges an illness or death that may have been related to employment at a DOE facility and should be submitted to a physicians panel to determine whether the medical evidence supports the applicable criteria. The Program Office would refer to a physicians panel any application that alleges the appropriate criteria, along with specific questions that the panel should address, based on criteria identified in the relevant State Agreement, in order to determine whether the condition in question arises out of employment and exposure to toxic substances. DOE invites comments on this alternative screening mechanism that would limit the use of state criteria to those related to the question of whether a disease arose from exposure to a toxic substance during employment at a DOE facility and that would not use other State criteria related to the broader question of whether an application presents a valid claim for compensation under the State's workers' compensation system. In particular, comments should address what type of criteria might be identified in a State Agreement under this alternative screening mechanism. Potential criteria might include: (1) Whether the disease originated from a hazard to which workers would have been equally exposed outside of the employment, (2) whether there is a causal connection between the work conditions and the disease, (3) whether the disease is peculiar to the occupation in which the employee is or was engaged, (4) whether the disease was contracted after a period of exposure to the toxic substance specified under state law, or (5) the level of medical probability that the disease was the material and direct result of the conditions under which the work.

DOE is considering an additional alternative that would provide for this screening determination to be made by State officials on a reimbursable basis. This would take advantage of the in-house expertise of the State workers' compensation offices. DOE invites affected States and interested members of the public to comment on this alternative screening mechanism. Under this alternative, DOE would contract with States to do the initial screening prior to submission of applications to the physician panels. States most likely have an existing structure within their workers' compensation office that could make these determinations. The determinations would not be compensation determinations, but rather a basic threshold test for eligibility based on pre-established determination criteria. Such criteria could include eligibility under that State's workers compensation laws; evidence that the application was filed on behalf of a DOE contractor employee or employee's estate; and evidence that the illness or death of the DOE contractor employee may have been related to employment at a DOE facility. If the State determines that an individual meets that test, the Program Office would then submit the necessary information to a physicians panel. DOE solicits comment on this alternative. DOE is specifically interested in receiving comment regarding the burden this would place on States and whether utilizing State expertise to make these determinations (rather than the Program Office) would justify this burden.

As a general matter, DOE requests comments as to: (1) whether the use of a screening mechanism is consistent with the statutory framework; and (2) whether the use of applicable State criteria or uniform Federal criteria better achieves the statutory objectives.

O. What Guidelines Does a Physicians Panel Use To Determine Whether an Illness Arose Out of and in the Course of Employment by a DOE Contractor and Exposure To a Toxic Substance at a DOE Facility?

Proposed section 852.7 provides that a physicians panel determines whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether there is sufficient information to support two findings. First, the physician panel must find there is an adequate factual basis for a prima facie case that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death. Second, taking into account all the information, the physicians panel must make a reasonable finding that it is more likely than not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death. This two-pronged test focuses on both adequacy of information and likelihood of causation.

Proposed section 852.7 sets the burden of proof as ''more likely than not.'' DOE considered and decided not to propose the ''as likely as not'' standard used in subtitles of the Act other than Subtitle D. In DOE's view, the ''more likely than not'' standard better reflects the proof of causation required by the statute's physicians panel provisions. DOE solicits comments on what is the appropriate burden of proof for assistance under the DOE program.

DOE considered and rejected proposing guidelines under which a physicians panel must determine whether an illness arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility by using the applicable criteria under State law in the manner used to determine the validity of a workers' compensation claim under State law. DOE decided it is more appropriate to take State criteria into account during the initial screening process. DOE does believe it is appropriate to have a physicians panel examine one or more of the medical criteria identified in a State Agreement if it is not possible during the initial screening to determine whether a particular criterion is satisfied. DOE solicits comments on the extent, if any, to which physicians panels should be expected to examine criteria used in State workers' compensation proceedings.

P. What Materials Should a Physicians Panel Review Prior to Making a Determination?

Proposed section 852.8 provides that each physicians panel member will receive from the Program Office a complete set of materials related to the applicant's diagnosis, medical history, work history, and history of exposures so that the panel will have an adequate body of information for making a determination. The panel must review all materials it receives from the Program Office.

Q. How May a Physicians Panel Obtain Additional Information or a Consultation That It Needs To Make a Determination?

A physicians panel may, on occasion, need additional information or consultations to make its determination. For expediency, documentation of evidence, maintenance of confidentiality, and records control, proposed section 852.9 requires the panel to make all requests for additional information through the Program Office.

The panel may request an interview with the applicant, if the panel believes that only the applicant can supply the necessary information. Based upon the experiences of similar physicians panels, including the Expert Panel of the Fernald II Settlement Fund, it is anticipated that such a request will be unusual, but may be necessary in rare cases in order to obtain essential information. The panel can also request that the applicant provide additional medical information. The physicians panel may request consultation with specialists in fields relevant to its deliberations, if needed, as provided for in section 3661(d)(4) of the Act, or refer to relevant medical and scientific literature. The Program Office will maintain a roster of available specialists for this purpose.

Subtitle D neither specifically authorizes nor specifically bars DOE from paying for the development of medical evidence (e.g. medical examinations) to support an individual's application for assistance under Subpart D. Although today's proposed regulations do not provide for DOE to pay for the development of the applicant's medical documentation, DOE considered proposing regulations to permit such activities. DOE elected not to make such a proposal because of doubts about statutory authorization and whether this approach is appropriate. DOE invites comment on this choice and the desirability of including regulations permitting such activities in the notice of final rulemaking.

R. How Is a Physicians Panel To Carry out Its Deliberations and Arrive at a Determination?

After each member of a physicians panel reviews the information, the panel members discuss an application and arrive at a determination by unanimous agreement of its members. Because it is anticipated that physicians panels will be spread out geographically, proposed section 852.10 permits teleconferencing. This system has worked well for prior physicians panels, such as the Expert Panel of the Fernald II Settlement Fund.

S. How Must a Physicians Panel Issue Its Determination?

In order to ensure that a physicians panel has made its determination based upon the relevant evidence and that it has provided the basis for its determination, proposed section 852.11 requires the panel to identify the materials it has reviewed in making its determination, and express the determination and its basis in a series of findings that logically links the evidence reviewed to the conclusions drawn. The panel must also cite, for the Program Office's consideration, any evidence to the contrary of the panel's determination, and explain why the panel finds this evidence to be not persuasive.

DOE anticipates that some covered workers who have applied for benefits under the DOL program will also apply for assistance from the Program Office in filing a claim with a State workers' compensation system. However, filing a claim under the DOL program is not a requirement for the DOE program. In addition, receiving benefits under the DOL program does not automatically entitle an applicant to receive assistance from the Program Office or a positive determination from a physicians panel. For example, under the DOL program a member of a Special Exposure Cohort who has a specified cancer could establish entitlement to benefits for a specified cancer in the absence of clear evidence that the disease is the result of exposure to a toxic substance. A physicians panel, however, can make a positive determination only if sufficient evidence is provided. Factual findings made by DOL, including findings based on dose reconstructions performed by HHS regarding the likelihood that cancer was caused by occupational exposure to radiation, while relevant to a panel's assessment, are not binding on a physicians panel. A physicians panel is free to make different causation determinations, or to base those determinations on different factual premises. A physicians panel would be expected to explain the extent to which it based its determination on the findings of any agency in its report to the Program Office.

T. When Must a Physicians Panel Issue Its Determination?

Proposed section 852.12 requires a physicians panel to submit its determination within 30 working days of receiving the application materials, unless granted an extension by the Program Office.

U. What Precautions Must Each Physicians Panel Member and Each Specialist Take in Order To Keep an Applicant's Personal and Medical Information Confidential?

Because records for review by the physicians panels and by medical specialists consulted at the request of these panels contain confidential, personal, and medical information, this section is included to provide safeguards that physicians panels and specialists must follow to preserve the confidentiality of this information. Physicians panel members and specialists are required to comply with all provisions of the Privacy Act of 1974 applicable to Worker Advocacy records. Safeguards specified include maintaining paper records in locked cabinets and desks, and not including personally identifiable information in published or unpublished reports, studies, or surveys.

V. What Actions Must a Physicians Panel Member Take if That Member Has a Potential Conflict of Interest in Relation To a Specific Application?

In order to ensure objectivity and fairness, proposed section 852.14 requires each panel member to report any real or perceived conflict of interest with regard to a particular application to the Program Office, and to cease reviewing the application pending instruction by the Program Office. The Program Office will then take appropriate actions to remedy the situation, generally referring the application to a different physicians panel. At least two physicians panels are designated to review applications submitted by employees of each DOE facility. The Program Office may also employ other remedies, such as substituting an alternate panel member for the panel member with the conflict of interest. The Program Office has alternate panel members available for this purpose if needed.

W. When May the Program Office Ask a Physicians Panel To Re-Examine an Application That Has Undergone Prior Physicians Panel Review?

Proposed section 852.15 provides that the Program Office may refer a case back to the original panel or to a different panel, after the original panel has made a determination, in the following circumstances: if the Program Office obtains additional information whose consideration could result in a different determination, including information provided by the applicant, for quality assurance purposes, or if an additional review is otherwise necessary for the fair determination of the application. The Program Office may refer an application to a different panel, but not the original panel, if the office has concerns that the available evidence does not support the original panel's determination, as one possible remedy for a conflict of interest involving a panel member, as described in section 852.14, or to ensure consistency between panels in their decision making.

X. Must the Program Office Accept the Determination of a Physicians Panel?

Proposed section 852.16 requires the Program Office, except as provided in section 852.15, to accept the determination by a physicians panel unless there is significant evidence to the contrary.

Y. Is There an Appeals Process?

Proposed section 852.17 provides that an applicant may request the Office of Hearings and Appeals to review: (1) A decision by the Program Office not to submit an application to a physicians panel, (2) a negative determination by a physicians panel that is accepted by the Program Office, or (3) a decision by the Program Office not to accept a positive determination by a physicians panel if the Program Office does not return the application to a physicians panel for further consideration. Proposed section 852.17 is clear that an applicant must request review by the Office of Hearings and Appeals in order to exhaust administrative remedies. An applicant must file a notice of appeal with the Office of Hearings and Appeals on or before 60 days from the date of a letter from the Program Office notifying the applicant of a determination appealable under this section. The Office of Hearings and Appeals will consider appeals in accordance with its procedures set forth in 10 CFR part 1003. A decision by the Office of Hearings and Appeals shall constitute final agency action.

Z. What Is the Effect of the Acceptance by the Program Office of a Positive Determination by a Physicians Panel?

In the event the Program Office accepts a positive determination by a physicians panel, the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system and cannot contest the claim or any award made regarding the claim. In addition, the Program Office may, to the extent permitted by law, direct a DOE contractor not to contest the claim or award. Furthermore, any costs of contesting the claim or award is not an allowable cost under a DOE contract.

AA. How Much Will This Program Cost?

DOE estimates that the worker assistance program will result in costs of $127,122,251 over the next ten years. This total cost estimate includes benefit costs for State workers' benefits paid to ill workers or their families, and operational costs for the operation of the Advocacy Office, Resource Centers, physicians panels and advisory committee. Of this total, $92,645,500 is attributed to administering the program. The administrative cost estimates are distributed among DOE Resource Center costs of $16,500,000, records search costs estimated at $45,895,500, physicians panel costs of $19,500,000, casework and hotline costs of $9,950,000 and Federal Advisory Committee costs of $800,000. DOE estimates that more than $45,000,000 of the $45,895,000 estimated costs for records searches will be in support of the DOL portion of the program, based on DOL estimates of the number of claimants. The highest annual administrative costs are anticipated in fiscal year 2003, and are estimated to be approximately $19,000,000.

DOE estimates the total benefit costs over the next ten years to be $34,476,751. The highest anticipated annual costs would be in fiscal year 2003, and are estimated at $29,695,098. Costs are expected to decrease each year thereafter throughout the estimation period. The total benefit costs will be distributed across a number of claimant and benefit types, including medical care, wage replacement, and permanent partial disability (PPD). The highest total costs for benefits are anticipated in fiscal year 2003, and are estimated to be just above $10,000,000. Medical cost estimates are based on Workers Compensation for Radiation Induced Illness: A Re-Examination of Past Practices and Options for Change by N. A. Ashford et al, January 1996, with costs escalated to1999 dollars. These cost estimates, as well as estimates of the number of claimants, are taken from DOE and DOL estimates for a prior legislative proposal covering some of the same workers and conditions covered by the Subtitle D worker assistance program. PPD benefits vary by State, worker attributes like age and employability, and worker wage. These estimates reflect a range of costs for disability payments.

DOE contractors will see increased costs in the form of insurance payments or premiums and increased contributions to State workers' compensation funds in some cases. Ultimately, DOE bears the cost of the additional workers' compensation claims, as DOE contractors pass on these costs.

III. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule would provide guidelines for the operation and determinations of physicians panels established to provide expert opinion to DOE on the cause of a worker's illness or death. It would not impose costs or burdens on any small business or other small entity. DOE, therefore, certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The proposed rule provides that an individual may submit an application for review and assistance to the Program Office that contains information relating to the individual's employment by a DOE contractor, the nature of the illness or death, and the relationship between the illness or death and the individual's employment at a DOE facility. The application is required for DOE to determine whether reasonable evidence exists for submitting the individual's application to a physician panel.

DOE is submitting to the Office of Management and Budget (OMB), simultaneously with the publication of this proposed rule, this collection of information for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection has been reviewed and assigned a control number by OMB. Interested persons may obtain a copy of the Paperwork Reduction Act Submission from the contact person named in this notice.

Interested persons are invited to submit comments to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice.

OMB is particularly interested in comments on: (1) The necessity for the proposed collection of information, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden; (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 or other forms of information technology.

DOE assumes that most applications for assistance under this part will be made in the first and second years after the worker assistance process is established. It is not possible to give precise estimates of the number of applications that will be filed. However, DOE previously has estimated the number of workers potentially eligible for State compensation at 1,200. For purposes of the Paperwork Reduction Act Submission, DOE is multiplying 1,200 by 5 to reach an estimate of the total number of applications that may be filed. DOE further assumes that one hour will be required to complete an application. Using these assumptions, DOE estimates the total annual paperwork burden to be approximately 6,000 hours.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule deals only with physicians panel procedures, and, therefore, is covered under the Categorical Exclusion for rulemakings that are strictly procedural in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on Agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to 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 are 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.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The scope of this proposed rule is limited to defining how a physicians panel established under the Act will determine whether the illness or death that is the subject of an application for assistance in filing a claim under a State's workers' compensation system arose out of and in the course of employment by the Department of Energy and exposure to a toxic substance at a Department of Energy Facility. Referral of an application to a physicians panel can occur only by agreement with the applicable State, and the proposed rule would require the application of that State's statutory workers' compensation criteria, if provided for in the agreement. Thus, this proposed rule would not preempt State workers' compensation law. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal Agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year. The Act also requires a Federal Agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an Agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal Agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has not prepared a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and

Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA, as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits energy supply, distribution, and use.

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

IV. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to this proposed rule. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s) (e.g., 852.2(a)) to which they refer when possible.

Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m.and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of the final rule. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she considers to be confidential and exempt from public disclosure by law should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The Department will make its own determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearing

1. Procedure for Submitting Requests to Speak

You will find the time and place of the public hearing listed at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. If you would like to speak at this hearing, contact Ms. Loretta Young, telephone: 202–586–2819; fax: 202–586–6010; e-mail: *loretta.young@eh.doe.gov;* address: Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, no later than 10 days in advance of the hearing.

The person making the request should briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least 10 days prior to the date of this hearing. Also, each presenter is to bring three copies of the prepared oral statement to the hearing. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with Ms. Young in advance.

2. Conduct of Hearing

DOE will designate a DOE official to preside at the public hearing. The public hearing will not be a judicial or evidentiary-type hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act (42 U.S.C. 7191). Each oral presentation is limited to 10 minutes. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations. Only those conducting the hearing may ask questions. The hearing will last as long as there are persons who have requested an opportunity to speak.

DOE will prepare a transcript of the hearing. DOE will retain the transcript and other records of this rulemaking and make them available for inspection in DOE's Freedom of Information Reading Room, as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

The presiding official will announce any further procedural rules needed for the proper conduct of the hearing.

List of Subjects in 10 CFR Part 852

Administrative practice and procedure, Government contracts, Hazardous substances, Workers' Compensation.

Issued in Washington, DC, on August 31, 2001.

Francis Blake,

Deputy Secretary of Energy.

For the reasons stated in the preamble, DOE hereby proposes to amend chapter III of title 10 of the Code of Federal Regulations by adding part 852 to read as follows:

PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Sec.

Authority: 42 U.S.C. 7384, *et seq.*; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 852.1 What is the purpose and scope of this part?

(a) This part implements Subtitle D of the Act by establishing the procedures under which:

(1) An individual may submit an application to the Program Office for review and assistance;

(2) The Program Office determines whether to submit an application to a physician panel;

(3) Physicians panels determine whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility;

(4) The Program Office accepts or rejects a determination by a physicians panel; and

(5) Appeals may be undertaken.

(b) This part covers applications based on the illness or death of a DOE contractor employee caused by exposure to a toxic substance during the course of employment at a DOE facility.

(c) All actions under this part must be pursuant to the relevant State Agreement and consistent with its terms and conditions.

§ 852.2 What are the definitions of terms used in this part?

Act means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

Applicant means a DOE contractor employee or the employee's estate seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system.

DOE means the U.S. Department of Energy.

DOE contractor employee means a ''Department of Energy contractor employee'' as defined by section 3621(11) of the Act.

DOE facility means a facility designated by DOE as a ''Department of Energy facility'' as defined by section 3621(12) of the Act.

Physicians panel means a group of physicians appointed by the Secretary of Health and Human Services pursuant to Subtitle D of the Act to evaluate potential claims of DOE contractor employees under the appropriate State workers' compensation system.

Program Office means the Office of Worker Advocacy within DOE's Office of Environment, Safety and Health, or any other DOE office subsequently assigned to perform the functions of the Secretary of Energy under Subtitle D of the Act.

State Agreement means an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Subpart D of the Act in filing a claim with the State's workers' compensation system.

Toxic substance means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

§ 852.3 How does an individual submit an application for review and assistance?

(a) An individual obtains an application for review and assistance—

(1) In person from the Program Office, from any Resource Center or from any DOE-sponsored Former Worker Program;

(2) By mail or telephone request to the Program Office; or

(3) In printable format, from the Program Office's web site.

(b) An individual submits an application for review and assistance—

(1) In person to the Program Office, to any Resource Center or to any DOE-sponsored Former Worker Program.

(2) By mail to the Program Office.

§ 852.4 What information and materials must an individual submit as a part of the application for review and assistance?

As a part of the application for review and assistance, an individual must submit, in writing:

(a) A signed request for a review of the application by a medical panel;

(b) A signed medical release, whereby the individual permits health care providers and health care facilities to release to the Program Office any medical records providing documentation of the individual's diagnosis or an opinion as to the relationship between the applicant's medical condition and exposure to a toxic substance while employed at a DOE facility;

(c) A signed release permitting the Program Office to obtain any records under the control of DOE and relevant to the individual's eligibility for the review and assistance program, or relevant to the adjudication of the application by a physicians panel, including employment, exposure and medical records;

(d) An employment history; and

(e) Any other information or materials deemed by the Program Office to be relevant to a determination of the individual's eligibility for the review and assistance program, or relevant to adjudication of the application by a physicians panel.

§ 852.5 What applications are submitted to a physician panel?

(a) The Program Office will submit an application to a physicians panel if the application contains adequate information to make a reasonable initial determination that:

(1) The application was filed by or on behalf of a DOE contractor employee or employee's estate;

(2) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility; and

(3) The conditions in the relevant State Agreement are or can be satisfied.

(b) The Program Office shall notify the applicant promptly in writing of a negative determination under this section.

§ 852.6 What conditions will be set forth in State Agreements?

Subject to negotiations between DOE and a State, a State Agreement must contain provisions that:

(a) A State will identify the applicable criteria used to determine the validity of a workers' compensation claim under State law and describe how those criteria are applied in a State workers' compensation proceeding;

(b) Only those applications that can satisfy the identified applicable criteria will be submitted to a Physicians Panel; and

(c) The Program Office will provide assistance to only those applications that satisfy the identified applicable criteria.

§ 852.7 How does a physicians panel determine whether an illness arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?

A panel shall determine whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether there is sufficient information to support:

(a) A prima facie case that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death; and

(b) A reasonable finding that it is more likely than not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death.

§ 852.8 What materials should a physicians panel review prior to making a determination?

The physicians panel should review all records relating to the application that are provided by the Program Office. Such records may include:

(a) Medical records;

(b) Employment records;

(c) Exposure records;

(d) Job history obtained by interview with the applicant;

(e) Medical Examiner's report or Coroner's report and death certificate;

(f) Workers' compensation records;

(g) Medical literature or reports;

(h) Information (e.g., dose reconstruction data) included as part of a claim under the Act filed with the Department of Labor; and

(i) Any other records or evidence pertaining to the applicant's request for assistance.

§ 852.9 How may a physicians panel obtain additional information or a consultation that it needs to make a determination?

If, after reviewing all materials provided by the Program Office, a physicians panel finds that it needs additional information or consultation with a specialist in order to make a determination, it must request this information or consultation through the Program Office. A physicians panel may request:

(a) A recorded interview under oath with the applicant by an individual designated by the Program Office if the physicians panel believes only the applicant can provide the necessary information.

(b) That the applicant provide additional medical information.

(c) Consultation with designated specialists in fields relevant to its deliberations.

(d)Specific articles or reports, or assistance searching the medical or scientific literature.

(e) Other needed information or materials.

§ 852.10 How is a physicians panel to carry out its deliberations and arrive at a determination?

(a) Each panel member reviews all materials relating to the application.

(b) All panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a common determination.

§ 852.11 How must a physicians panel issue its determination?

A physicians panel must submit its determination and the findings that provide the basis for its determination to the Program Office. The determination of whether the illness or death that is the subject of the application arose out of and in the course of employment by DOE and exposure to a toxic substance at a DOE facility, and the findings must be in writing and signed by all panel members. These findings must include:

(a) Each illness or cause of death that is the subject of the application.

(b) For each illness or cause of death listed under paragraph (a) of this section:

(1) Diagnosis.

(2) Approximate date of onset.

(3) Date of death, where applicable.

(4) Whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility.

(5) The basis for the determination under paragraph (a)(4) of this section.

(c) The physicians panel must provide the program office with:

(1) Any evidence to the contrary of the panel's determination, and why the panel finds that this evidence is not persuasive.

(2) A listing of information and materials reviewed by the panel in making its determination, including:

(i) Information and materials provided by the Program Office.

(ii) Information and materials obtained by the panel, including consultations with specialists, scientific articles, and the record of an interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

(4) If explicitly requested by DOE with respect to a specific criteria identified in the relevant State Agreement, a finding as to whether the specified criteria is satisfied, to the extent such a finding is within the expertise of the physicians panel.

§ 852.12 When must a physicians panel issue its determination?

A physicians panel must submit its determination and findings to the Program Office within 30 working days of the time that panel members have received the application for review from the Program Office; provided that, the Office may grant an extension of the time period if requested by the physicians panel.

§ 852.13 What precautions must each physicians panel member and each specialist take in order to keep an applicant's personal and medical information confidential?

In order to maintain the confidentiality of an applicant's personal and medical information, each physicians panel member and each specialist consulted at the request of a physicians panel must take the following precautions:

(a) After receiving applicant records from the Program Office, maintain the confidentiality of these records, keep them in a secure, locked location, and, upon completion of panel deliberations, follow the instructions of the Program Office with regard to the disposal or temporary retention of these records;

(b) Conduct all case reviews and conferences in private, in such a fashion as to prevent the disclosure of personal applicant information to any individual who has not been authorized to access this information;

(c) Release no information to a third party, unless authorized to do so in writing by the applicant; and

(d) Adhere to the provisions of the Privacy Act of 1974 regarding Worker Advocacy Records.

§ 852.14 What actions must a physicians panel member take if that member has a potential conflict of interest in relation to a specific application?

(a) If a panel member has a past or present relationship with an applicant, an applicant's employer, or an interested third party that may affect the panel member's ability to objectively review the application, or that may create the appearance of a conflict of interest, then that panel member must immediately:

(1) Cease review of the application; and

(2) Notify the Program Office and await further instruction from the Office.

(b) The Program Office must then take such action as is necessary to assure an objective review of the application.

§ 852.15 When may the Program Office ask a physicians panel to re-examine an application that has undergone prior physicians panel review?

(a) Under the following circumstances, the Program Office may direct the original physicians panel or a different physicians panel to re-examine an application that has undergone prior physicians panel review:

(1) If the Program Office obtains new information whose consideration could result in a different determination.

(2) For quality assurance purposes.

(3) In any other situation in which the Program Office concludes that there is good cause for re-examination of an application, except as specified in paragraph (b) of this section.

(b) Under the following circumstances, the Program Office may direct a different physicians panel, but

not the original physicians panel, to re-examine an application that has undergone prior physicians panel review:

(1) The Program Office concludes that there is doubt whether the available evidence supports the original panel's determination;

(2) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or

(3) In order to ensure consistency among panels.

§ 852.16 Must the Program Office accept the determination of a physicians panel?

(a) Except as provided in § 852.15 of this part, the Program Office must accept the determination by a physicians panel unless there is significant evidence to the contrary.

(b) The Program Office must promptly notify an applicant of its acceptance or rejection of a determination by a physicians panel.

§ 852.17 Is there an appeals process?

(a) In order to exhaust administrative remedies, an applicant must request the Office of Hearings and Appeals to review:

(1) A decision by the Program Office not to submit an application to a physicians panel;

(2) A negative determination by a physicians panel that is accepted by the Program Office; or

(3) A decision by the Program Office not to accept a positive determination by a physicians panel and not to return the application to a physicians panel for further consideration.

(b) An applicant must file a notice of appeal with the Office of Hearings and Appeals on or before 60 days from the date of a letter from the Program Office notifying the applicant of a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of the Office of Hearings and Appeals in 10 CFR part 1003.

(d) A decision by the Office of Hearings and Appeals shall constitute final agency action.

§ 852.18 What is the effect of the acceptance by the Program Office of a positive determination by a physicians panel?

In the event the Program Office accepts a positive determination by a physicians panel:

(a) The Program Office must:

(1) Assist the applicant in filing a claim with the relevant State's workers' compensation system; and

(2) Not contest the claim or any award made regarding the claim;

(b) The Program Office may, to the extent permitted by law, direct a DOE contractor not to contest the claim or award; and

(c) Any costs of contesting the claim or award shall not be an allowable cost under a DOE contract.

[FR Doc. 01–22472 Filed 9–6–01; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB01

Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to amend its regulations on use of NARA research rooms to add a policy on use of public access personal computers (workstations) in the research rooms. These NARA-provided workstations will provide researcher access to the Internet. We are also clarifying that, in research rooms where the plastic researcher identification card is also used with the facility's security system, we will issue a plastic card to researchers who have a paper card from another NARA facility. This proposed rule will affect researchers who use NARA research facilities nationwide.

DATES: Comments are due by November 6, 2001.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via the Internet to *comments@NARA.GOV*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 3095–AB01'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Regulation Comment desk at 301–713–7360, ext. 226.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION:

Public Access Personal Computer Workstations in the Research Rooms § 1254

Before September 30, 2001, NARA will have installed personal computer workstations with Internet access in research and/or consultation rooms in all NARA archival facilities, including regional archives and Presidential libraries, for the exclusive use of researchers. There will be at least one workstation at each facility. Space constraints in many of the facilities limit the number of workstations that can be provided.

These computers will provide Internet access for research purposes, such as access to NARA's Archival Information Locator (NAIL), and NAIL's successor, the Archival Research Catalog (ARC). Computers designated for public use provide Internet access only. At least one of the public Internet access workstations in each facility complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

Use of the workstations will be on a first-come, first-served basis. A 30-minute time limit may be imposed on the use of the equipment when others are waiting to use a workstation. This policy is compatible with our policy for limiting the length of time microform readers and self-service copiers may be used when others are waiting.

Because of the possibility of introducing a virus to NARA's computer network, researchers may not load files or software on these computers. For the same reason, researchers may not use personally owned diskettes to download information. Researchers may download information to diskettes furnished by NARA and print information to an on-site printer. Based on the experience of several NARA facilities that already have Internet capability in the research room, we expect low to moderate use of the NARA-provided diskettes and printers. Therefore, we do not intend to charge for these services.

Validity of Paper Researcher Identification Cards at all NARA Facilities

Currently NARA researcher identification cards issued at one NARA facility are valid at all NARA facilities. At our College Park facility, a plastic researcher identification card that works with our security system is issued. We intend to expand use of the plastic card to the National Archives Building in downtown Washington, DC, and possibly to other NARA facilities in the future. We are modifying the existing

rule to provide that NARA will issue a plastic identification card (at no charge) to replace a previously-issued paper one when a researcher goes for the first time to a facility that use the plastic cards.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to individuals conducting research on NARA premises. This regulation does not have any federalism or tribal implications.

List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1254 of title 36, Code of Federal Regulations, as follows:

PART § 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise § 1254.6 to read as follows::

§ 1254.6 Researcher identification card.

(a) An identification card is issued to each person who is approved to use records other than microfilm. Cards are valid for three years, and may be renewed upon application. Cards are valid at each facility, except as described in paragraph (b) of this section. They are not transferable and must be presented if requested by a guard or research room attendant.

(b) At the National Archives in College Park and other NARA facilities that issue and use plastic researcher identification cards as part of their security systems, paper researcher identification cards issued at other NARA facilities are not valid. In facilities that use plastic researcher identification cards, NARA will issue a plastic card to replace the paper card at no charge.

3. Add § 1254.25 to read as follows:

§ 1254.25 Rules for public access use of the Internet on NARA-supplied personal computers.

(a) Public access personal computers (workstations) are available for Internet use in all NARA research rooms. The number of workstations varies per location. These workstations are intended for research purposes and are provided on a first-come-first-served basis. When others are waiting to use the workstation, a 30-minute time limit may be imposed on the use of the equipment.

(b) Researchers should not expect privacy while using these workstations. These workstations are operated and maintained on a United States Government system, and activity may be monitored to protect the system from unauthorized use. By using this system, researchers expressly consent to such monitoring and the reporting of unauthorized use to the proper authorities.

(c) At least one Internet access workstation will be provided in each facility that complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

(d) Researchers may download information to a diskette and print materials, but the research room staff will furnish the diskettes and paper. Researchers may not use personally owned diskettes on NARA personal computers.

(e) Researchers may not load files or any type of software on these workstations.

Dated: August 31, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 01–22484 Filed 9–6–01; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD011/108–3056b; FRL–7040–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the Control of Iron and Steel Production Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of amending the applicable test methods for use at iron and steel facilities. The revisions also establish a visible emission standard for Basic Oxygen Furnace (BOF) Shops at integrated steel mills. Finally the revisions remove certain obsolete requirements related to coke ovens and hearth furnaces. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A more detailed description of the state submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by October 9, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 10, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–22367 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–4–7530; FRL–7051–3]

Approval and Promulgation of Air Quality State Implementation Plans; Supplemental; Texas: Low Emission Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rulemaking supplements a previous proposal published April 23, 2001 (66 FR 20415), in which EPA proposed approving a State Implementation Plan (SIP) revision for the State of Texas establishing a Low Emission Diesel (LED) fuel program for nine counties within the Dallas-Fort Worth (DFW) Consolidated Metropolitan Statistical Area (CMSA). Today's supplemental proposal revises the April 23 proposal to reflect recent changes to the LED rule proposed by the Texas Natural Resource Conservation Commission (TNRCC). These proposed changes to the TNRCC LED rule include a change to the implementation date for this program to April 1, 2005, and possible alternate compliance methods. We previously proposed that the TNRCC LED fuel program requirements are necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the DFW ozone nonattainment area, and therefore could be approved into the SIP in accordance with section 211(c)(4)(C) of the Clean Air Act (the Act).

Because TNRCC has not yet finalized the changes to the LED rule, we are proposing to approval Texas' proposed SIP revision of the LED rule for DFW in parallel with TNRCC's rulemaking activities (''parallel processing''). If the final version of the LED rule adopted by TNRCC is significantly changed from the proposed version which is being ''parallel processed'' today, EPA will propose a new rulemaking with the final LED rule adopted by TNRCC. If there are no significant changes to the ''parallel-processed'' version, EPA will proceed with final rulemaking on the version finally adopted by TNRCC and submitted to EPA.

DATES: Comments should be received on or before October 9, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7214.

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

Why Is the State Submitting This Revision?

The LED fuel program was initially submitted as part of the DFW attainment demonstration. This LED rule was codified in Chapter 114 of the Texas Administrative Code (TAC) (Sections 114.6, 114.312–114.317 and 114.319, December 6, 2000).

Numerous changes to State air pollution control laws occurred during Texas' 77th legislative session. One of these changes relates to the LED program. House Bill 2912, which became law on June 17, 2001, limits the State's authority to regulate fuel content. The law bans the establishment of fuel control measures more stringent than EPA's between September 1, 2000 and January 1, 2004. The law specifically authorizes TNRCC's adoption of the LED fuel program, but mandates that implementation be delayed until February 1, 2005. Finally, this law allows TNRCC to consider other fuels to achieve equivalent emissions reductions as an alternative method of compliance, which is intended to allow refiners flexibility in complying with the LED requirements.

In anticipation of this legislation, the TNRCC proposed amendments to the LED rule on May 10, 2001. The proposed amendments modify the LED rules to delay the implementation date from May 1, 2002, to April 1, 2005, and provide additional flexibility to allow for alternative emission reduction plans.

What Did the State Submit?

In a letter to EPA dated June 15, 2001, the Governor requested ''parallel processing'' of the LED rule with the proposed amendments. See 30 TAC 114.314, 114.318, 114.319 (May 10, 2001).

What Is EPA's Evaluation of This SIP Revision?

We consider the implementation date change to have no significant impact on the DFW attainment demonstration. The alternative method of compliance which is intended to provide additional flexibility for refiners to comply with LED requirements is acceptable, although we have requested clarification of certain aspects of this provision.

Why Are We ''Parallel Processing'' and How Does it Work?

Because of the urgency associated with the October 15, 2001, approval deadline imposed by a consent decree order affecting, among others, the Houston Attainment SIP (*Natural Resources Defense Council* v. *Browner*, Civ No. 99–2976, November 30, 1999), Texas requested that EPA proceed with expedited review and approval of these revisions to the LED program, which is relied upon in the Houston (HGA) attainment demonstration SIP as well as the DFW attainment demonstration SIP. Therefore, because these revisions affect both the HGA and DFW attainment demonstrations and because the HGA attainment SIP is subject to a consent decree deadline, we have agreed to expedited review of these revisions for both the DFW and HGA SIP revisions.

In order to expedite review, approval of this revision is being proposed under a procedure called ''parallel processing'' whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those subsequent changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal, altering the approvability of the SIP.

What Is EPA Proposing?

In today's action, we are proposing approval of the LED rule with the proposed amendments as they apply to the DFW nonattainment area counties plus five adjacent counties within the CMSA.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.'' This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 24, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–22523 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE058–1032; FRL–7052–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). Kent and New Castle Counties are part of the Philadelphia area. The intended effect of this action is to propose approval of a reasonably available control measure (RACM) analysis submitted by the State of Delaware. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 9, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179. Or by e-mail at *cripps.christopher@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

When Did Delaware Submit the RACM Analysis?

On August 3, 2001, the State of Delaware (Delaware) submitted the RACM analysis for the Philadelphia area as a SIP revision.

II. Analysis of the Delaware Submittal

A. What Are the Requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). (See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

B. How Does This Submission Address the RACM Requirement?

The analysis submitted by the Delaware on August 3, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Delaware has examined a wide variety of potential stationary source and mobile source controls. The stationary/area source controls that were considered were limits on area source categories not covered by a control technique guideline (CTG) (*e.g.,* motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; expanding the applicability of CTG limits to sources smaller than those mandated under the CTG); ''beyond RACT'' controls on major stationary sources of nitrogen oxides (NO_X); and other potential measures. The mobile source control measures considered included measures such as the national low emission vehicle program, high occupancy vehicle (HOV) lanes; employer based programs; trip reduction ordinances; bicycle and pedestrian improvements; programs to restrict extended idling of vehicle; early retirement of older motor vehicles; traffic flow improvements; and alternative fuel vehicles. Delaware considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Delaware includes the following:

(1) Delaware has adopted, and EPA has SIP-approved, a rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings at least equivalent to the Federal requirements and required compliance with this rule in 1996 versus in 1998 as required under the Federal rule.

(2) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from offset lithographic printing operations.

(3) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from aerospace coating operations with an applicability threshold well below that required by the applicable CTG.

(4) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from graphic arts operations (packaging rotogravure, publication rotogravure, or flexographic printing press) with an applicability threshold well below that required by the applicable CTG.

(5) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from use of organic cleaning solvents that includes requirements that go beyond the applicable CTG for surface cleaning and degreasing.

(6) Delaware has adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program.

(7) Delaware has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 in Delaware and reduces NO_X emissions both inside and outside the Philadelphia area.

(8) Delaware has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. Delaware's rule requires compliance commencing with the start of the 2003 ozone season.

Other potential measures are not considered to be cost effective or have implementation difficulties due to the intensive and costly effort that would be involved in regulating numerous, small area source categories. These explanations are provided in further detail in the docket for this rulemaking. Delaware concluded that a number of potential transportation control measures were considered feasible, but would not, in aggregate, advance the attainment date.

The attainment demonstration for the Philadelphia area contains modeling using the urban airshed model (UAM) which demonstrates that the Philadelphia area cannot attain solely through reductions in the Philadelphia nonattainment area. The Philadelphia area relies on background reductions of transported ozone to attain the one hour ozone standard. EPA established in the NO_X SIP Call, promulgated on October 27, l998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO_X SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the NO_X SIP Call assumed in the one hour ozone NAAQS attainment demonstration for the Philadelphia area will occur. EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States, that sought to mitigate interstate transport of NO_X emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late

1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Philadelphia area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 or 2004 under the NO_X SIP call or the section 126 petitions.

To demonstrate attainment of the one hour ozone standard, the UAM modeling required the Delaware portion of the Philadelphia area to achieve emissions levels on the order of 104 tons per day of VOC emissions and 138 tons per day of NO_X. The ROP plan for 2005 is projected to get emissions levels down to 96.5 tons per day of VOC emissions and 138 tons per day of NO_X excluding the benefits of the Federal Tier 2/Sulfur rule.[1] This Tier 2/Sulfur program will further reduce emissions in the area staring with the 2004 model year vehicles.[2] Any potential reductions from the remaining potential RACM measures in aggregate are relatively small (as documented in the docket for this rulemaking) compared to the ROP reductions that will be achieved by the 2005 attainment date.

Thus, EPA concludes that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all upwind and local controls scheduled for implementation by 2005.

III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Delaware's August 3, 2001 RACM submittal discussed above. EPA is proposing to approve Delaware's SIP revision for RACM, which was submitted on August 3, 2001, as a supplement to its one hour attainment demonstration for the Philadelphia area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

[1] The ROP plan does but the attainment modeling does not consider the effects of the Federal Tier 2/Sulfur rule; thus an adjustment to exclude the Federal Tier 2/Sulfur rule effects on the ROP plan projections is necessary to compare the ROP plan projections with the attainment plan modeling.

[2] With the Federal Tier 2/Sulfur rule benefits, the 2005 projections are 95.8 tons per day of VOC emissions and 134.3 tons per day of NO_X.

IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Delaware on August 3, 2001 as a supplement to its one hour attainment demonstration for the Philadelphia area. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Delaware and submitted formally to EPA for incorporation into the SIP.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule regarding Delaware's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: August 31, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–22617 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD126–3080; FRL–7051–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). Cecil County, Maryland is part of the Philadelphia area. The intended effect of this action is to propose approval of a RACM analysis submitted by the State of Maryland. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 9, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179. Or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What Previous Proposed Actions Have Been Taken on the Attainment Demonstration SIP Revisions?

On December 16, 1999, we proposed approval of the attainment demonstration for the Philadelphia area, which was submitted on April 29, 1998 (64 FR 70412). We supplemented our December 16, 1999 proposed action on July 28, 2000 (65 FR 46383) and July 16, 2001 (66 FR 36964).

B. When Did Maryland Submit the RACM Analysis?

On August 20, 2001, the State of Maryland (Maryland) submitted the RACM analysis (Maryland SIP Revision Number 01–09) for the Philadelphia area as a SIP revision.

II. Analysis of the Maryland Submittal

A. What Are the Requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). (See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

B. How Does This Submission Address the RACM Requirement?

The analysis submitted by Maryland on August 20, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (CTG) (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of nitrogen oxides (NO_X) beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating

equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from ''digital imaging''—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20° C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_X emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from lithographic printing.

Maryland has adopted and submitted rules for additional ''beyond RACT'' reductions in NO_X emissions as follows:

(1) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from specified major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO_X emissions both inside and outside the Philadelphia area.

(2) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_X control in the attainment demonstration).

Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The Maryland portion (Cecil County) of the Philadelphia area has unique local characteristics that affect the effectiveness of many mobile source measures. The first is that the majority of the vehicle travel occurs on the Interstate 95 highway; much of this traffic is through traffic that would not be affected by locally adopted transportation control measures. Cecil County is a rural area without much of the mass transit infrastructure found in State's other major nonattainment areas (Baltimore, Metropolitan Washington, DC). The area has few point sources of VOC emissions and no major sources of NO_X. Most of the area source VOC emissions are already subject to regulation. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some were rejected because they would not advance attainment because the measure had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the ''try transit week'' items. These explanations are provided in further detail in the docket for this rulemaking.

The attainment demonstration for the Philadelphia area contains modeling using the urban airshed model (UAM) which demonstrates that the Philadelphia area cannot attain solely through reductions in the Philadelphia nonattainment area. The Philadelphia area relies on background reductions of transported ozone to attain the one hour ozone standard. EPA established in the NO_X SIP Call, promulgated on October 27, 1998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO_X SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the NO_X SIP Call assumed in the 1-hour ozone attainment demonstration for the Philadelphia area will occur. EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States, that sought to mitigate interstate transport of NO_X emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late 1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Philadelphia area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 or 2004 under the NO_X SIP call or section 126 petitions.

As previously stated, the Philadelphia attainment demonstration contains UAM modeling which demonstrates that the Philadelphia area cannot attain solely through reductions in the Philadelphia nonattainment area. The Philadelphia area relies on background reductions of transported ozone to attain the one hour ozone standard. To demonstrate attainment of the one hour ozone standard, the modeling required the Maryland portion of the Philadelphia area to achieve emissions levels on the order of 8.2 tons per day of VOC emissions and 10.5 tons per day of NO_X. To reach these emissions levels, emission reductions (relative to the 1990 base year) of 3.2 tons per day of NO_X and 10.3 tons per day of VOC are necessary in the Maryland portion of the Philadelphia area. Any potential reductions from the remaining potential RACM measures in aggregate are small compared to the 2005 attainment demonstration reductions (plus the addition of the Tier 2/Sulfur benefits) that will be reached by the 2005 attainment date. Thus, EPA concludes that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all upwind and local

controls scheduled for implementation by 2005.

III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Maryland's August 20, 2001 RACM submittal. EPA is proposing to approve Maryland's SIP revision for RACM, which was submitted on August 20, 2001, as a supplement to its one hour attainment demonstration for the Philadelphia area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Maryland on August 20, 2001 as a supplement to its one hour attainment demonstration for the Philadelphia area. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this action, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Maryland and submitted formally to EPA for incorporation into the SIP.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule regarding Maryland's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: August 31, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–22618 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD125–3079; FRL–7051–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration Plan for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Baltimore severe ozone nonattainment area (the Baltimore area). The intended effect of this action is to propose approval of a RACM analysis submitted by the State of Maryland. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 9, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179. Or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What Previous Proposed Actions Have Been Taken on the Attainment Demonstration SIP Revisions?

On December 16, 1999, we proposed approval of the attainment demonstration for the Baltimore area, which was submitted on April 29, 1998 (64 FR 70397). We supplemented our December 16, 1999 proposed action on July 28, 2000 (65 FR 46383) and July 16, 2001 (66 FR 36964).

B. When Did Maryland Submit the RACM Analysis?

On August 20, 2001, the State of Maryland (Maryland) submitted the RACM analysis (Maryland SIP Revision Number 01–08) for the Baltimore area as a SIP revision.

II. Analysis of the Maryland Submittal

A. What Are The requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). (See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

B. How Does this Submission Address the RACM Requirement?

The analysis submitted by Maryland on August 20, 2001, as a supplement to its attainment demonstration SIP for the Baltimore area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (CTG) (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of nitrogen oxides (NO_X) beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from ''digital imaging''—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_X emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has approved Maryland's rule for control of VOC emissions from lithographic printing.

Maryland has also adopted and submitted rules for additional ''beyond RACT'' reductions in NO_X emissions as follows:

(1) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from specified major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO_X emissions both inside and outside the Baltimore area.

(2) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_X control in the attainment demonstration).

Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has adopted into its post-1996 rate-of-progress plans through the attainment year of 2005 rule effectiveness improvements.

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based programs; and other measures such as trip reduction ordinances, value pricing and highway ramp metering. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some measures were rejected because they would not advance attainment because they had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the ''try transit week'' items. A number of the potential RACM candidates are already programmed into the area's transportation plan as mitigation measures. As such, these measures pass the feasibility test. Maryland concluded these would not advance the attainment date because their emission benefits, even when aggregated with other potentially feasible measures, are small relative to the amount needed to attain the standard. These explanations are provided in further detail in the docket for this rulemaking.

The attainment demonstration for the Baltimore area contains modeling using the urban airshed model (UAM) which demonstrates that the Baltimore area cannot attain solely through reductions in the Baltimore nonattainment area. The Baltimore area relies on background reductions of transported ozone to attain the 1-hour ozone standard. EPA established in the NO_X SIP Call, promulgated on October 27, 1998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO_X SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the NO_X SIP Call assumed in the 1-hour ozone attainment demonstration for the Baltimore area will occur. EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States, that sought to mitigate interstate transport of NO_X emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late 1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Baltimore area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 or 2004 under the NO_X SIP call or the section 126 petitions.

As previously stated, the Baltimore attainment demonstration contains UAM modeling which demonstrates that the Baltimore area cannot attain solely through reductions in the Baltimore nonattainment area. The Baltimore area relies on background reductions of transported ozone to attain the 1-hour ozone standard. To demonstrate attainment of the 1-hour ozone standard, the modeling required the Baltimore area to achieve emissions levels on the order of 224 tons per day of VOC emissions and 323 tons per day of NO_X. To reach these emissions levels, emission reductions (relative to the 1990 base year) of 152 tons per day of NO_X and 120 tons per day of VOC are necessary in the Baltimore area. Any potential reductions from the remaining potential RACM measures in aggregate are small compared to the 2005 attainment demonstration reductions (plus the addition of the Tier 2/Sulfur benefits) that will be reached by the 2005 attainment date. Thus, EPA concludes that no additional measures could advance the attainment date for the Baltimore area prior to full implementation of all upwind and local controls scheduled for implementation by 2005.

III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Maryland's August 20, 2001 RACM submittal. EPA is proposing to approve Maryland's SIP revision for RACM, which was submitted on August 20, 2001, as a supplement to its one-hour attainment demonstration for the Baltimore area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Maryland on August 20, 2001 as a supplement to its one-hour ozone attainment demonstration for the Baltimore area.

V. Administrative Requirements

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

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule regarding Maryland's RACM analysis for the Baltimore area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: August 31, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–22619 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 431

[CMS–2128–P]

RIN 0938–AL06

Medicaid Program; Continue To Allow States an Option Under the Medicaid Spousal Impoverishment Provisions To Increase the Community Spouse's Income When Adjusting the Protected Resource Allowance

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: Section 1924 of the Social Security Act (the ''Act'') sets forth provisions designed to afford financial protection against impoverishment to a non-institutionalized spouse of an institutionalized individual. These provisions contain several formulas to provide this protection and specify how income and resources of spouses separated by institutionalization will be treated for purposes of determining the institutionalized spouse's Medicaid eligibility and calculating the amount the institutionalized spouse must contribute towards the cost of his or her institutional care. This proposed rule would implement certain provisions of section 1924 of the Act, which provides for fair hearings for an increase in the community spouse resource allowance.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 2001.

ADDRESSES: In commenting, please refer to file code CMS–2128–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2128–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (410) 786–3417.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–0626 or (410) 786–7195.

I. Background

A. Statutory Basis

Title XIX of the Social Security Act (the Act), ''provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons.'' *Harris* v. *McRae,* 448 U.S. 297, 301 (1980). Under section 1902(a)(17) of the Act, each participating State must develop a plan containing ''reasonable standards * * * for determining eligibility for and the extent of medical assistance.'' *Schweiker* v. *Gray Panthers,* 453 U.S. 34, 36 (1981). Section 1902(a)(17)(B) of the Act states that those State standards must ''provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient.''

Section 1924 of the Act requires a State with a Medicaid program to use special rules for the treatment of income and resources of married institutionalized individuals who have

spouses who are not institutionalized. (Throughout this preamble, we use the term ''institutionalized spouses'' to mean married institutionalized individuals and the term ''community spouses'' to mean spouses who are not institutionalized.) These provisions are referred to as the ''spousal impoverishment'' provisions. The spousal impoverishment provisions govern the allocation of income and resources between the spouses for determining Medicaid eligibility of the institutionalized spouse as well as allowing the States to determine how much income of the institutionalized spouse is available to be applied toward the cost of his or her institutional care (''post-eligibility determinations'').

B. Income and Resource Allocation

Income and resource calculations for married persons have proved to be a matter of great complexity, particularly when one of the spouses is cared for in an institutional setting, such as a nursing home, but the other spouse is not institutionalized. Before 1989, the provisions governing the Medicaid eligibility of institutionalized spouses sometimes left the community spouse with income below the poverty level and with minimal resources as well. At that time, after the month of institutionalization, the income of the two spouses was considered separately in most States for purposes of determining an institutionalized spouse's eligibility. However, very little of the institutionalized spouse's income could be protected for use by the spouse in the community. This often left the community spouse with little income to live on. After the month of institutionalization, most States would consider the joint resources of the community spouse and the institutionalized spouse (subject to a limited exclusion), and any property owned solely by the institutionalized spouse to be available for the care of the institutionalized spouse. (Property owned solely by the community spouse was not considered.) Thus, depending on how resources were owned, many married couples would have to deplete almost all of their resources before the institutionalized spouse would qualify for Medicaid. The net effect of those requirements in some cases was the ''pauperization'' of the community spouse. H.R. Rep. No. 105, 100th Cong., 1st Sess. Pt. 2, at 65 (1987).

The Congress attempted to alleviate that spousal impoverishment hardship in the Medicare Catastrophic Coverage Act (MCCA) of 1988, (Public Law 100–360, enacted on December 22, 1988.) The MCCA requires a State to use a complex set of requirements and exclusions when allocating income and resources between community and institutionalized spouses, both when the State makes the initial eligibility determination, and later in post-eligibility determinations.

In section 1924(a)(1) of the Act, it provides that the spousal impoverishment provisions ''supersede any other provision'' of the Medicaid statute that ''is inconsistent with them.'' However, the MCCA did not repeal the Secretary's authority to prescribe standards (under section 1902(a)(17)(B) of the Act) for determining what income is ''available'' to a spouse, and the requirement for States to set reasonable standards for determining eligibility and amount of assistance. That section 1902(a)(17) authority may now only be exercised in a manner that does not contravene the specific requirements of the spousal impoverishment provisions.

With respect to the allocation of income as part of an eligibility determination, the spousal impoverishment provisions impose only a single rule. Section 1924(b)(1) of the Act provides that during any month in which an institutionalized spouse is in the institution, no income of the community spouse shall be deemed available to the institutionalized spouse (subject to certain qualifications regarding income attribution). Thus, section 1924(b)(1) of the Act establishes a special rule that protects the income of the community spouse by excluding that income from consideration when determining whether the institutionalized spouse is eligible for Medicaid. Section 1924(b)(1) of the Act, however, does not address the extent to which the State may consider the institutionalized spouse's income available to meet the needs of the community spouse.

With respect to income attribution after the State makes the initial eligibility determination, the spousal impoverishment provisions provide more extensive guidance and requirements. Specifically, section 1924(b)(2) of the Act provides that, if payment of income is made solely in the name of one spouse, that income is generally treated as available *only* to that spouse. Section 1924(d) of the Act provides a number of exceptions to that rule, which are generally designed to ensure that the community spouse has sufficient income to meet his or her basic monthly needs. In particular, section 1924(d) of the Act provides for the establishment of a minimum monthly maintenance needs allowance for each community spouse. The community spouse's minimum monthly maintenance needs allowance is set at a level that is much higher than the official Federal poverty level. Once income is attributed to each of the spouses according to the general rules in section 1924(b) of the Act, the income attributed to the community spouse is compared to the community spouse's minimum monthly maintenance needs allowance. Section 1924(d)(2) of the Act provides that if the community spouse's income is less than the minimum monthly maintenance needs allowance, the amount of the shortfall can be deducted from the income of the institutionalized spouse that would otherwise be considered available for the care of the institutionalized spouse. The amount of that deduction is referred to as the community spouse monthly income allowance.

The deduction of the community spouse monthly income allowance, in effect, prevents income the community spouse needs to meet basic living expenses from being considered available for the care of the institutionalized spouse. The deduction thus causes Medicaid to assume a greater portion of the costs of institutionalized care. The greater Medicaid payments for care of the institutionalized spouse would free up income to meet the minimum needs of the community spouse. The community spouse monthly income allowance, therefore, ensures that the community spouse's basic monthly maintenance needs can be met *before* the institutionalized spouse's income is considered available to pay for the costs of his or her own institutional care.

With respect to the attribution of resources between the institutionalized spouse and community spouse, the statute provides extensive rules for both initial and post-eligibility decisions. For initial eligibility determinations, each spouse's share of resources is calculated as of the beginning of the institutionalized spouse's first period of institutionalization. At that time, all of the institutionalized spouse's and community spouse's resources are tallied together, and one half of the total value is allocated to each spouse (the ''spousal share''). Often, most of the resources allocated to the institutionalized spouse must be exhausted before the institutionalized spouse is eligible for Medicaid. In contrast, the community spouse's share is protected from complete exhaustion. In particular, the community spouse's resources are not considered available for the care of the institutionalized spouse (and the institutionalized spouse can become Medicaid eligible) so long as the community spouse's share does

not exceed the community spouse resource allowance (CSRA). Thus, the CSRA limits the extent to which the spouses must exhaust resources before the institutionalized spouse becomes eligible for Medicaid. Section 1924(f)(2)(A) of the Act specifies that the CSRA is the greatest of (1) $12,000 or a State standard up to $60,000 (indexed for inflation; for 2001 the indexed amount is $87,000); (2) the lesser of the spousal share (approximately one-half of the spouses' pooled resources) or $60,000 (indexed for inflation); (3) the amount set at a fair hearing under section 1924(e)(2) of the Act; or (4) the amount transferred under a court order.

In allocating income and resources between spouses, States have employed two divergent methods. Under the method used by most States, known as the ''income-first'' method, the institutionalized spouse's income (above the allowances specified in section 1924(d) of the Act) is allocated to the community spouse for purposes of determining the extent to which the community spouse has sufficient income to meet minimum monthly maintenance needs. Under the income-first method, the CSRA is increased only if the community spouse's income will not reach his or her minimum monthly maintenance needs allowance *after* taking into account any income not protected under section 1924(d) that is available or potentially available from the institutionalized spouse. In contrast, under the other method, known as the ''resources-first'' method, the couple's resources can be protected for the benefit of the community spouse to the extent necessary to ensure that the community spouse's total income, including income generated by the CSRA, meets the community spouse's minimum monthly maintenance needs allowance. Additional income from the institutionalized spouse that may be, but has not been, made available for the community spouse is not considered.

C. Current Policy and Implementation of the New Provisions

Section 1924(e)(2)(C) of the Act provides that if either spouse establishes that the CSRA (in relation to the amount of income generated by that allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted an amount adequate to provide a minimum monthly maintenance needs allowance.

We have previously issued policy memoranda and letters expressing our view that section 1924(e)(2)(C) of the Act authorizes a State to consider potential income transfers from an institutionalized spouse to a community spouse, so that a State may adopt the income-first method or apply some other reasonable methodology until we issue final regulations addressing the issue. Thus, under our present policy, States may clearly use the income-first method, and may be able to use other methods, such as resources-first. In other words, consistent with the statutory requirement that State's utilize ''reasonable standards'' for determining eligibility and the amount of benefits as described in Section 1902(a)(17), we have permitted States to employ income-first or other reasonable methodologies. In practice, no State has elected to use a method other than income-first or resources-first. The proposed regulation is therefore intended to codify and reflect long-standing State practices.

However, the issue of which criteria may be employed during the fair hearing under section 1924(e)(2)(C) of the Act to determine whether, and if so by how much, to raise the CSRA has been the subject of some dispute. Permitting the community spouse to obtain a larger CSRA can give the community spouse additional income-generating resources to meet minimum monthly needs. Without an increase in the CSRA, the resources would be considered available to the institutionalized spouse and might have to be exhausted before the institutionalized spouse would be Medicaid eligible. On the other hand, permitting the hearing officer to raise the CSRA when the institutionalized spouse has income which could be used to enable the community spouse to meet minimum monthly maintenance needs can, under some circumstances, have unintended consequences for a State's Medicaid program. This policy can create an avenue for a couple to shelter almost limitless amounts of resources, provided these resources currently have minimal incoming-producing value.

Indeed, the legality of the income first rule has been challenged in several courts. The United States Courts of Appeals for the Sixth and Third Circuits have upheld the income-first rule in *Chambers* v. *Ohio Dep't of Human Servs.,* 145 F.3d 793, 802 (6th Cir. 1998) and *Cleary* v. *Waldman,* 167 F.3d 801, 811–812 (3d Cir. 1999), respectively. Nevertheless, the Wisconsin Court of Appeals invalidated a Wisconsin statute, which adopted the income-first rule, holding that the spousal impoverishment provisions of the Medicaid program unambiguously preclude the use of an ''income-first'' methodology. The United States Supreme Court has granted the State of Wisconsin's petition for review of this decision. See *Wisconsin Department of Health and Family Services* v. *Blumer,* No. 00–952.

Because this subject has been a source of some controversy, we believe it is appropriate to codify provisions regarding the community spouse resource allowance before adopting regulations governing all of the spousal impoverishment protection provisions of section 1924 of the Act.

II. Provisions of the Proposed Regulations

We propose to allow States the threshold choice of using either the income-first or resources-first method when determining whether the community spouse has sufficient income to meet minimum monthly maintenance needs. Under our proposal, States would not be able to use different rules on a case-by-case basis, but must apply the same rule to all spouses. Under section 1902(a)(17)(B) of the Act, the Secretary has authority to prescribe appropriate standards for determining whether income is ''available.'' In the exercise of that authority, and in view of the cooperative federalism considerations embodied in the Medicaid program, we have concluded that States may be in the best position to determine the type of protection to afford community spouses and whether to require hearing officers to take into account any income of the institutionalized spouse before raising the CSRA.

We believe that section 1924 of the Act does not specifically address whether the income-first or resources-first method is appropriate in making the determination on raising the CSRA. Section 1924(e)(2)(C) of the Act directs the State to determine whether the community spouse's income meets his or her minimum monthly maintenance needs. It also provides that, if the community spouse's income falls short of meeting those needs, the CSRA should be increased by an amount that will generate sufficient income *to bring the community spouse's income to the minimum monthly maintenance needs level.* However, this statutory guidance does not address whether the community spouse's income may include the institutionalized spouse's income that could be made available to the community spouse.

In fact, while section 1924(b)(1) specifically prohibits the *community spouse's* income from being considered available for the care of the *institutionalized spouse,* the statute does not preclude the Secretary nor the

State from considering the *institutionalized spouse's income* from being available to the *community spouse* for purposes of determining whether the community spouse's needs will be met absent an increase in the CSRA. That supports an inference that it is permissible to consider all or some portion of the institutionalized spouse's income to be available to the community spouse. In addition, the legislative history suggests that Congress contemplated the possibility that, in determining whether to raise the CSRA, States might take into account not only the community spouse's own income but ''other income attributable to the community spouse'' consistent with the Secretary's rules. H.R. Cong. Rep. No. 661, 100th Cong., 2d Sess 265 (1988). Accordingly, we believe that the statute permits an income-first rule and does not foreclose a resources-first rule.

Because an income-first rule would conserve scarce resources that States may allocate towards their Medicaid programs, avoid sheltering of high value low income-producing resources, and generally affords the community spouse a significant degree of protection from impoverishment, States may prefer to employ this approach. On the other hand, the resources-first rule may in certain cases afford greater protection to the community spouse, especially after the death of the institutionalized spouse. While in our view, the statute certainly does not compel States to adopt the resources-first method, we believe it would be appropriate to afford the option of selecting a resources-first rule.

Section 1924(a) of the Act provides that in determining the eligibility for medical assistance of an institutionalized spouse, its provisions supersede any other provision of title XIX of the Act, ''which is inconsistent with them,'' including section 1902(a)(17). Section 1902(a)(17)(B) of the Act provides that the State plan for medical assistance shall ''provide for taking into account only the income and resources, as are, *as determined in accordance with standards prescribed by the Secretary*, available to the applicant or recipient * * *.'' (Emphasis supplied.) In *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 44, 101 S.Ct 2633, 2640 (1981), the Supreme Court held that the underscored language constituted a delegation of substantive rulemaking authority to the Secretary. Therefore, section 1902(a)(17)(B) of the Act gives the Secretary the authority to promulgate regulations on the matter of how much income and resources are available to applicants for, or recipients of, Medicaid for determining their eligibility and the amount of assistance they may receive. Furthermore, because our proposal to permit States to use either the income-first or resources-first method does not conflict with section 1924 of the Act, we can issue a proposed rule on this matter.

As noted above, section 1924(e)(2)(C) of the Act authorizes either spouse to establish whether the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance. However, it does not specify whether in the process of establishing the inadequacy of the community spouse resource allowance, all of the institutionalized spouse's income which could be made available to the community spouse must be taken into account before seeking this adjustment. Because section 1924(e)(2) of the Act is silent on this issue, it does not conflict with the Secretary's authority under section 1902(a)(17)(B) of the Act to prescribe standards for determining the amount of the institutionalized spouse's income that would be available to the community spouse in determining whether it is appropriate to raise the community spouse resource allowance. This determination would have a corresponding impact on the institutionalized spouse's Medicaid eligibility.

Since our decision, under section 1902(a)(17)(B) of the Act, to permit States to use either the income-first or resources-first rule does not conflict with section 1924 of the Act, we are able to issue proposed regulations on this matter. In other words, because the statute does not require nor foreclose States from using either the income-first or resources-first method, we can use the rulemaking authority under section 1902(a)(17) of the Act to leave the choice of method to the States. (This approach is consistent with the Supreme Court's decision in *Batterton* v. *Francis*, 432 U.S. 416 (1977), which upheld a regulation that permitted States to define ''unemployed'' either to include families participating in a labor strike or to exclude them.) In addition, Section 1902(a)(17) contemplates that States will establish plans containing ''reasonable standards'' for determining eligibility consistent with the Act and our regulations. The statute thus contemplates that different States may establish different standards for determining eligibility, so long as all are ''reasonable'' and all are consistent with the Act and our regulations. Accordingly, as an exercise of our discretion, we propose to leave to the States the option to either use the income-first or resources-first method for purposes of a fair hearing under section 1924(e)(2)(C) of the Act to determine whether, and if so by how much, to raise the CSRA.

As such, we propose to add a new § 431.260 to provide for fair hearings to raise the community spouse resource allowance. At § 431.260(a), we propose to define ''institutionalized spouse'' as an individual who is married to a person who is not in a medical institution or nursing facility and who is either likely to be in an institution or nursing facility or likely to be receiving services under a home and community-based waiver under section 1902(a)(10)(A)(ii)(VI) of the Act for at least 30 consecutive days. We propose to define the term ''community spouse'' as the spouse of an institutionalized individual. We would define the term ''community spouse resource allowance'' as the amount of a couple's combined resources (held jointly and separately), allocated to the community spouse and considered unavailable to the institutionalized spouse when determining his or her eligibility for Medicaid, as specified in section 1924(f)(2)(A) of the Act. Additionally, we would define ''minimum monthly maintenance needs allowance'' as the minimum amount of an institutionalized spouse's income that is protected for the community spouse.

At § 431.260(b), we would specify that either spouse may request a hearing to establish that the community spouse resource allowance (in relation to the amount of income generated by the allowance) is not adequate to raise the community spouse's income to the minimum monthly maintenance needs allowance. At § 431.260(c), we propose to provide that the State must choose to use either the income-first method or the resources-first method when determining whether to increase the community spouse resource allowance to ensure the community spouse has sufficient income to meet minimum monthly maintenance needs. We would provide that under the income-first method, the State require that all income of the institutionalized spouse that could be made available to the community spouse after subtracting the allowances specified in section 1924(d) be considered to be available before additional resources are allocated to raise the community spouse's income to meet the minimum monthly maintenance needs allowance. We propose that under the resources-first method, the State allocate additional resources to raise the community spouse's income to meet the minimum monthly maintenance needs allowance

without regard to income of the institutionalized spouse that potentially could be made available to the community spouse, but has not been made available.

III. Collection of Information Requirements

Under the Paper Work Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment if Office of Management and Budget review and approval is needed because a proposed regulation imposes a collection of information requirement. However, this proposed regulation does not impose any new collection of information requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. The proposed regulation only codifies the existing State practice of choosing whether to use income-first or resources-first, a matter we have left entirely to each State. We do not currently require States to formally notify us about which approach they take, and the proposed regulation similarly does not require this notification. Thus, the proposed rule imposes no new or different processes or information requirements on States.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This proposed rule would give States an option to use either an income-first method or resources-first method when determining whether the community spouse has sufficient income to meet minimum monthly maintenance needs. This proposed rule is not a major rule because it would not impose new costs on State governments or other entities. The proposed rule only codifies existing State practices, and in no way requires States to take any action that would increase or even change their current program costs.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule would have no impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The proposed rule would have no impact on the private sector. The rule would impose no requirements on State, local or tribal governments. The rule only codifies existing State practices, and thus requires no new or additional expenditures of funds by any entity, government or private.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because this proposed rule only codifies existing State practices, it would impose no requirements on governments, nor does it preempt State law or otherwise have Federalism implications.

B. Anticipated Effects

Because the proposed rule only codifies existing State practices, it will have no new effect on State governments, providers, or the Medicaid and Medicare programs. Therefore, we are not providing an impact analyses.

C. Alternative Considered

We considered imposing a requirement on all States to use the income-first methodology, or a requirement that all States use the resources-first methodology when determining whether to raise the community spouse resource allowance. However, as explained in the preamble to this proposed rule, we do not believe the statute clearly requires the use of either of those alternatives to the exclusion of the other. Therefore, we believe, in the spirit of Federalism, that we should leave to States the decision as to which alternative to use.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Sections Affected in 42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services propose to amend 42 CFR part 431 as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.200 [Amended]

2. Section 431.200 is amended by adding the sentence, ''This subpart also implements section 1924(e)(2)(C) of the Act, which provides for a fair hearing regarding revision of the community

spouse resource allowance.'' at the end of the section.

3. A new undesignated, centered heading, and new § 431.260 are added to read as follows:

Community Spouse Resource Allowance

§ 431.260 Fair hearings to raise the community spouse resource allowance.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Community spouse means the spouse of an institutionalized individual.

Community spouse resource allowance means the amount of a couple's combined jointly and separately-owned resources, as specified in section 1924(f)(2)(A) of the Act, allocated to the community spouse and considered unavailable to the institutionalized spouse when determining his or her eligibility for Medicaid.

Institutionalized spouse means an individual who meets all of the following criteria:

(1) The individual is in a medical institution or nursing facility (or at the State's option, is eligible for home and community-based waiver services under section 1902(a)(10)(A)(ii)(VI) of the Act).

(2) The individual is likely to remain in a medical institution or nursing facility (or satisfy the State option) for at least 30 consecutive days.

(3) The individual is married to a person who is not in a medical institution or nursing facility.

Minimum monthly maintenance needs allowance means the minimum amount of income, as determined under section 1924(d)(3) of the Act, that is protected for the community spouse when determining the amount of the institutionalized spouse's income that is to be applied to the cost of care.

(b) *Request for a hearing.* Either spouse (or authorized representative) may request a hearing to establish that the community spouse resource allowance (in relation to the amount of income generated by the allowance) is not adequate to raise the community spouse's income to the minimum monthly maintenance needs allowance.

(c) *Methodology for determining an increase in the community spouse resource allowance.* For purposes of conducting a hearing to determine whether it is appropriate to raise the community spouse resource allowance (and if so by how much) a State must elect either of the following methods, which must apply to all hearings of this type under the State's Medicaid program:

(1) *Income-first method.* The State considers that all income of the institutionalized spouse that could be made available to the community spouse, after deducting the allowances specified in section 1924(d) of the Act, has been made available before additional resources are allocated to raise the community spouse's income to the minimum monthly maintenance needs allowance.

(2) *Resources-first method.* The State allocates to the community spouse additional income-producing resources to raise the community spouse's income to the minimum monthly maintenance needs allowance without first considering all income of the institutionalized spouse that could be made available to the community spouse as if it has been made available.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 28, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 30, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–22605 Filed 9–6–01; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 66, No. 174
Friday, September 7, 2001

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

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statements: Vegetation Management in the Appalachian Mountains; Vegetation Management in the Coastal Plain/ Piedmont; and Vegetation Management in the Ozark/Ouachita Mountains

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare three supplemental environmental impact statements.

SUMMARY: The Forest Service, Southern Region, will prepare a Supplemental Environmental Impact Statement (EIS) for each of the three Vegetation Management EISs: (1) *Vegetation Management in the Appalachian Mountains;* (2) *Vegetation Management in the Coastal Plains/Piedmont;* and (3) *Vegetation Management in the Ozark/ Ouachita Mountains* to clarify management requirements contained in each on Proposed, Endangered, Threatened, and Sensitive (PETS) species and to amend the subject Forest Land and Resource Management Plans to clarify the same requirements. The existing requirements for Biological Evaluations (BEs) unnecessarily restrict analysis to population survey information and would require gathering population inventory information in cases where gathering the information is not technically feasible or necessary. If approved, the changes would provide for using widely accepted methods of biological analysis and would improve the efficiency of conducting BEs on National Forests in the Southern Region.

DATES: Comments concerning the proposals should be received on or before October 9, 2001.

ADDRESSES: Send written comments to the Regional Forester, Attention: Mercedes Martin; USDA, Forest Service; Suite 811N; 1720 Peachtree St., NW; Atlanta, GA; 30309–9102.

FOR FURTHER INFORMATION CONTACT: Co-team leaders Robert Wilhelm, (404) 347–7076 or David Purser (404) 347–5292.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to amend Forest Plans in the Southern Region and supplement the EISs for Vegetation Management in the Appalachian Mountains, the Coastal Plains/Piedmont, and the Ozark/ Ouachita Mountains to clarify Management Requirements for managing PETS species. The changes pertain to requirements for gathering population inventory information on PETS species when conducting a BE for proposed vegetation management projects.

The action is needed because the requirements for conducting BEs for vegetation management projects exclude accepted methods of analysis, overemphasize population inventory information, and, in some cases, require gathering population inventory information where it is unnecessary or is not technically feasible. The Records of Decision for the three EISs amended the Forest Plans in the Southern Region.

In a separate action, the Southern Region will supplement the Forest Service Manual to include regional policy requirements on conducting BEs. The Forest Service is inviting comment on that action under 36 CFR 216.

Decisions To Be Made

The Regional Forester will decide whether, and in what way, to modify the management requirements pertaining to population inventory information in BEs for projects covered in the three Records of Decision and EISs for Vegetation Management, and, through the Records of Decision, will amend the respective Forest Plans to make the corresponding changes in the standard on conducting BEs.

Responsible Official

Elizabeth Estill, Regional Forester, 1720 Peachtree St., NW; Atlanta, GA, 30309–9102 is the Responsible Official making the decisions on regional requirements on vegetation management and to amend the Forest Plans to make the corresponding changes.

Preliminary Issues

One preliminary issue has been identified: whether PETS species will be adequately protected and managed.

Public Involvement

The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action.

While public participation in these analyses is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft Supplemental EISs. No public meetings are planned. The scoping process for each supplement will include identifying: potential issues, significant issues to be analyzed, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Estimated Dates for Filing

The three Draft Supplemental EISs are expected to be filed with the Environmental Protection Agency (EPA) and available for public review by December 2001. At that time, EPA will publish a Notice of Availability of each Draft Supplemental EIS in the **Federal Register**. The comment period on each Draft Supplemental EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is important that those interested in the population inventory issue participate at that time.

The Final Supplemental EISs are scheduled to be completed by March 2002. In the Final Supplemental EISs, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in each Draft Supplemental EIS and applicable laws, regulations, and policies considered in making a decision regarding each proposal.

The Reviewer's Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Supplemental EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 31, 2001.

Elizabeth Estill,

Regional Forester.

[FR Doc. 01–22500 Filed 9–6–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, September 17, 2001. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center; 400 West Virginia Street; Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes:

(1) Discussion of written comments received from the public regarding the proposed management plan for Opal Creek Scenic Recreation Area.

(2) Development of Alternative Proposals that address various elements presented in the written public comments.

A public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the September 17 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

DISCLAIMER: This meeting notice is being published less than 15 days prior to the meeting to accommodate the required 45-day public comment period on the proposed SRA Management Plan. This late notice is authorized under 41 CFR 1016.1015(b)(2).

Dated: August 30, 2001.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 01–22501 Filed 9–6–01; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 8, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Grounds Maintenance
Naval Air Warfare Center Weapons Division, Buildings 456 (N97) and 1438 (Main Post Area), White Sands Missile Range, New Mexico
NPA: Tresco, Inc., Las Cruces, New Mexico

Government Agency: Department of the Navy

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–22546 Filed 9–6–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 8, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 29 and July 27, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 34612 and 39142) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Tape, Electronic Data
7045–01–357–9939
Wipes, Alcohol, TX806 Isopropyl
7045–01–321–7456

Service

Janitorial/Custodial, U.S. Coast Guard, MSO/Group Portland, 6767 North Basin Avenue, Portland, Oregon.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–22547 Filed 9–6–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 083101B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Gear Identification Requirements

Form Number(s): None.

OMB Approval Number: 0648–0351.

Type of Request: Regular submission.

Burden Hours: 32,664.

Number of Respondents: 3,685.

Average Hours Per Response: 1 minute per piece of gear.

Needs and Uses: Regulations at 50 CFR 648.81 (f), 648.84, 648.123 (b)(3), 648.144 (b), and 697.21 require that Federal fishing permit holders using specified fishing gear mark that gear with specified information (the official vessel numbers, Federal permit number, tag number, or other method identified in the regulation). The regulations also specify how the gear is to be marked (e.g. location and visibility). Marking of gear aids law enforcement and also helps identify gear involved in damage, loss, or civil proceedings.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–22550 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 083101C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0360.

Type of Request: Regular submission.

Burden Hours: 1,420.

Number of Respondents: 232.

Average Hours Per Response: 2 minutes per gearmarking.

Needs and Uses: This collection of information covers regulatory requirements for fishing gear identification under the Magnuson-Stevens Fishery Conservation and Management Act. The regulations specify that fishing gear must be marked with the vessel's official identification number. The regulations further specify how the gear is to be marked, e.g., location and visibility. Vessels in the Western Pacific pelagic longline and Northwestern Hawaiian Islands lobster fisheries are affected. This information is used for enforcement purposes, and for purposes of gear identification

concerning damage, loss, and civil proceedings.

Affected Public: Business or other for-profit organizations, individuals.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–22551 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 083101D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0350.

Type of Request: Regular submission.

Burden Hours: 4,363.

Number of Respondents: 5,821.

Average Hours Per Response: 45 minutes.

Needs and Uses: Federally-permitted vessels in the Northeast Region of the U.S. must display their vessel identification numbers on three locations (port and starboard of deckhouse or hull, and weather deck) on the vessel at a required size. The requirement is needed to assist the National Marine Fisheries Service and the Coast Guard in enforcing fishery regulations.

Affected Public: Business or other for-profit organizations, individuals.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–22552 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2001]

Proposed Foreign-Trade Zone—Washington County, MD; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of County Commissioners of Washington County, Maryland, to establish a general-purpose foreign-trade zone at sites in Washington County, Maryland, adjacent to the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 31, 2001. The applicant is authorized to make the proposal under Article 23, Section 467 of the Annotated Code of Maryland.

The proposed zone would be the third general-purpose zone in the Baltimore Customs port of entry area. The existing zones are FTZ 73 in Baltimore (Grantee: Maryland Department of Transportation/Maryland Aviation Administration, Board Order 180, 46 FR 58730, 12/3/81); and, FTZ 74 in Baltimore (Grantee: Baltimore Development Corporation, on behalf of the City of Baltimore, Maryland, Board Order 183, 47 FR 5737, 2/8/82).

The proposed new zone would consist of 7 sites in Washington County: *Site 1* (276 acres)—Lakeside Corporate Center (formerly, Ft. Ritchie Military Reservation, owned by the PenMar Development Corporation), 200 Castle Drive, Cascade; *Site 2* (443 acres)—387 acres within the 600-acre Hagerstown Regional Airport complex and 56 acres within the adjacent Bowman Airpark (owned by Washington County and the Bowman Group Properties), 18434 Showalter Road, Hagerstown; *Site 3* (81 acres)—Hub Industrial Park (owned by the Dahbura Family Limited Partnership), 18223 Shawley Drive, Maugansville; *Site 4* (722 acres)—Hunter's Green/Hopewell Valley industrial complex (owned by the Bowman Group Properties and by Tiger Development, Inc.), south of the intersection of Hopewell Road and Halfway Boulevard, Hagerstown; *Site 5* (43 acres)—City of Hagerstown Industrial Park (owned by the City) located on the east side of Frederick Street, Hagerstown; *Site 6* (172 acres)—Interstate Industrial Park complex (owned by the Bowman Group Properties), 10228 Governor Lane Boulevard, Williamsport; and, *Site 7* (129 acres)—Mellott Enterprises industrial complex (owned by Mellott Enterprises), Resley Street, approximately one mile north of Maryland Avenue, Hancock. Sites 2, 4, 5 and 7 are located in State-designated Enterprise Zones.

The application indicates a need for foreign-trade zone services in the Washington County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 17, 2001, at 10:00 a.m., Board of County Commissioners Hearing Room, 2nd Floor, 100 West Washington Street, Hagerstown, Maryland.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 6, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 21, 2001).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Washington County Administrator, Washington County Administration Building, 100 West Washington Street, Room 226, Hagerstown, MD 21740–4727

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230

Dated: August 31, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–22559 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Industrial Nitrocellulose From France: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, Bergerac, N.C., the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturers/exporter, Bergerac, N.C. The period of review is August 1, 1999, through July 31, 2000.

We have preliminarily determined that sales by Bergerac, N.C. have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: David Dirstine, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On August 10, 1983, the Department of Commerce (the Department) published in the **Federal Register** (48 FR 36303) the antidumping duty order on industrial nitrocellulose (INC) from France. On August 25, 2000, the respondent requested a review of that order for respondent Bergerac, N.C. On October 2, 2000, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative review of this order for the period of review August 1, 1999, through July 31, 2000 (POR) (65 FR 58733). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in serveral viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the *Harmonized Tariff Schedule of the United States Annotated* (HTSUS) subheadings 3912.20.00 and 3912.90.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written descriptions of the scope of this proceeding remain dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by Bergerac, N.C. (BNC), using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales, financial, and cost records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099.

Constructed Export Price

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) (H.R. Doc. 103–316 (1994) at 823–824) to the URAA, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, and indirect selling expenses in the United States. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act. No other adjustments to CEP were claimed or allowed.

Tevco, Inc. (TEVCO), a U.S. affiliate of BNC, imported subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers. The further-manufactured products were then sold to unaffiliated parties. We preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation applies to the sales made by TEVCO in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price to an unaffiliated party of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison, and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price to an unaffiliated party of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated

purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser, TEVCO. Based on this analysis, we determined that the estimated value added in the United States by TEVCO accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. See 19 CFR 351.402(c) for an explanation of our practice on this issue; see also *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part,* 66 FR 36551, 36555, Decision Memorandum at Comment 28 (July 12, 2001) (AFBs). Therefore, we determine preliminarily that the value added is likely to exceed substantially the value of the subject merchandise.

For BNC, we determine preliminarily that there was a remaining sufficient quantity of sales of identical or other subject merchandise to unaffiliated persons to provide a reasonable basis for comparison and that the use of these sales is appropriate as a basis for calculating margins of dumping on the value-added merchandise. See *AFBs.* Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. See the Analysis Methodology memorandum from J. David Dirstine to the file dated August 30, 2001.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by BNC in France was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. BNC's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

On November 29, 2000, the Department received a below-cost allegation from the petitioner, Green Tree Chemical Technologies, Inc. The petitioner's below-cost allegation made use of BNC's data on the record, employed a reasonable methodology, and provided evidence that alleged below-cost sales are representative of a broader range of models that may be used as a basis for normal value. Therefore, pursuant to section 773(b)(1)(A) and (B), on December 20, 2000, we initiated a below-cost investigation of sales by BNC in its home market. For a further discussion of this below-cost investigation, see Memorandum to Richard W. Moreland from Laurie Parkhill, dated December 20, 2000, on file in the CRU, Room B–099.

In accordance with section 773(b)(3) of the Act, we calculated the cost of production (COP) based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home-market selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. We used the home-market sales data and COP information provided by BNC in its questionnaire response.

After calculating a weighted-average COP, in accordance with section 773(b)(3) of the Act, we tested whether the home-market sales of INC were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared grade-specific COP's to the reported home-market prices less any applicable movement charges, discounts and rebates, indirect selling expenses, commissions, and packing.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of BNC's sales of a grade of INC were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of BNC's sales of a grade of INC during the period of review were at prices less than the COP, we disregarded such below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of home-market prices to weighted-average COPs for the period of review, we determined that below-cost sales of INC were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost sales with respect to BNC.

We compared U.S. sales with sales of the foreign like product in the home market.

Home-market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions deducted from CEP.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, we base normal value, to the extent practicable, on sales at the same level of trade as the CEP. If normal value is calculated at a different level of trade, we make an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. We determined that there was one level of trade in the home market. We were unable to match CEP sales at the same level of trade in the home market or to make a level-of-trade adjustment, because the differences in price between the CEP level of trade and the home-market level of trade are not quantifiable due to the lack of an equivalent CEP level of trade in the home market. Section 773(a)(7)(B) of the Act provides for an adjustment to normal value if normal value is established at a level of trade that is a more advanced stage of distribution than the level of trade of the CEP sale and the information on the record does not provide a basis for determining a level-of-trade adjustment. Therefore, we have made a CEP offset for all such sales as requested by the respondent. (See the Level of Trade section of our analysis memorandum to the file, dated August 30, 2001, on file in the CRU, Room B–099.)

Preliminary Results of Reviews

As a result of our review, we preliminarily determine the weighted-average dumping margins of 3.26 percent for the period August 1, 1999, through July 31, 2000.

Any interested party may request a hearing within 30 days of the date of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three days after submission of rebuttal briefs.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs.

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* duty-assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined CEP sales made during the POR to the total customs entered value of the sales used to calculate these duties. We will direct the Customs Service to assess the resulting percentage margin for the reviewed CEP sales uniformly on all entries of that particular importer during the POR as well as on those entries of subject merchandise for which we determined that the special rule for merchandise with value added after importation applied under section 772(e) of the Act. See 19 CFR 351.212(a).

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for Bergerac, N.C. will be the rate established in the final results of review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will 1.38 percent. This is the ''All Others'' rate from the less-than-fair-value investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–22557 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On February 27, 2001, the Department of Commerce (''the Department'') published the preliminary results of administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (''PRC''). This review covers an exporter, Guizhou Provincial Chemicals Import & Export Corporation (''Guizhou''), and its supplier of potassium permanganate, the Zunyi Chemical Factory (''Zunyi''). The period of review (''POR'') is January 1, 1999 through December 31, 1999.

The final weighted-average dumping margin for the reviewed exporter is listed below in the section entitled *''Final Results of Review.''* The final margin differs from that published in the preliminary results due to changes that we made since the preliminary results. For details regarding these changes, see the section of the notice entitled ''*Changes Since the Preliminary Results.*''

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Howard Smith, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474 or (202) 482–5193 respectively.

SUPPLEMENTARY INFORMATION:

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 (''the Act'') by the Uruguay Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (2001).

Background

Since the publication of the preliminary results, the following events have occurred. On March 19, 2001 the respondents and the petitioner (Carus Chemical Company (''Carus'')) submitted publicly available information and comments regarding factor valuation. On March 29, 2001 petitioner filed rebuttal comments regarding the respondents' March 19, 2001 factor value submission and objected to respondents' submission because it lacked certificates of accuracy. At the Department's request the respondents submitted an appropriate certificate on April 5, 2001. See the memorandum to the file from the case analyst dated April 16, 2001. In response to the Department's invitation to comment on the preliminary results of review, the petitioner and the respondents filed case briefs on March 30, 2001 and rebuttal briefs on April 5, 2001. The Department held a public

hearing regarding this review on April 13, 2001.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Bernard T. Carreau, Deputy Assistant Secretary, Important Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *www.ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of Review

Based on our analysis of the petitioner's and the respondents' comments, we have made certain changes to the factors of production and surrogate values used to calculate the margin in the preliminary results. The changes and corrections are discussed in the relevant sections of the Decision Memorandum. In addition, further details regarding the changes and corrections can be found in the surrogate value memorandum (*see Surrogate Values Used for the Final Results of the 1999 Administrative Review of Potassium Permanganate From the People's Republic of China*), which is on file in room B–099 of the main Department of Commerce building.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period January 1, 1999 through December 31, 1999:

Exporter/manufacturer	Margin (percent)
Guizhou Provincial Chemicals Import & Export Corporation ...	107.32

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for sales to a specific importer by the total quantity of subject merchandise sold to the importer in order to calculate a per-unit dollar assessment. The per-unit dollar amount will be assessed uniformly against each unit of subject merchandise that the importer entered during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 128.94 percent; and (4) the cash-deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 27, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Allegations That the Sale is not Bona Fide and There was Fraud Upon the Department's Proceedings
2. Allegation of Failure to Properly Address the Characteristics of the Sale
3. Allegation of Failure to Take into Account the Importer's Resale Price
4. Allegation of Failure to Properly Weigh Evidence Regarding the Shipper's Policy on LCL Shipments
5. Allegation of Failure to Address Fraud on the Department's Proceedings
6. Allegation of Failure to Properly Weigh Evidence Regarding Knowledge of the Hazardous Nature of the Merchandise
7. Allegation of Failure to Take into Account Evidence Regarding the Parties Responsible for the Merchandise Descriptions on House Bills of Lading (HBLs)
8. Allegation of Failure to Properly Weigh Evidence Regarding the Fraudulent HBL
9. Allegation That the Department Improperly Placed the Burden of Proof on Petitioner
10. Allegation of Failure to Determine Whether the Shipment was Legal
11. Allegation That the Department's Approach in the Preliminary Results Undermines Trade Laws
12. Respondents' Failure to Provide the Required Certification with their Factor Value Submission
13. Use of Third-Party Price Quotes Dated after the Preliminary Results
14. Contemporaneity and Representativeness of Respondents' Price Quotes
15. Surrogate Value for Coal
16. Surrogate Value for Drums Used for Packing
17. Surrogate Value for Electricity
18. Surrogate Value for Manganese Dioxide
19. Surrogate Value for Potassium Hydroxide
20. Surrogate Value for Selling, General and Administrative Expenses (SG&A), Factory Overhead and Profit Ratios

21. Surrogate Value for Water
22. Inputs Used to Treat River Water: Lime, Alum, Salt, Electricity and Labor
23. Surrogate Value for Lime
24. Surrogate Value for Alum
25. Surrogate Value for Salt

[FR Doc. 01–22560 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Softwood Lumber Products From Canada

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

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Gabriel Adler, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0650, or (202) 482–3813, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: The Department of Commerce (the Department) is postponing the deadline for issuance of the preliminary determination in the antidumping duty investigation of certain softwood lumber products from Canada until October 15, 2001.

On April 23, 2001, the Department initiated an antidumping investigation of certain softwood lumber products from Canada. *See Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 21328 (April 30, 2001). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation (*i.e.,* September 10, 2001). At the request of the petitioner,[1] on July 30, 2001, the Department postponed the date of preliminary determination by two weeks, until September 24, 2001.

In accordance with Section 733(c)(1)(A) of the Tariff Act of 1930, as amended, (the Act), on August 23, 2001, the petitioner filed a request that the Department further postpone the preliminary determination in this investigation by three weeks. The petitioner's request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1) of the Act, the Department is postponing the deadline for issuing this preliminary determination until October 15, 2001.

This postponement is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: August 31, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–22556 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] Coalition for Fair Lumber Imports Executive Committee.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–811; A–455–803; A–823–809; A–822–804, A–570–860, A–580–844, A–449–804, A–841–804]

Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine

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

ACTION: Notice of antidumping duty orders.

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur (Belarus) at (202) 482–5346, Maisha Cryor (Indonesia) at (202) 482-5831, Christopher Smith (Latvia and Ukraine) at (202) 482–1442, Michele Mire (Moldova) at (202) 482–4711, Constance Handley (People's Republic of China) at (202) 482–0631, Chris Riker (Poland) at (202) 482–0186, Mark Manning (Republic of Korea) at (202) 482–3936, AD/CVD Enforcement, Group II, 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 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 references to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Scope of Orders

For purposes of these orders, the product covered is all steel concrete reinforcing bars (rebar) sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Act, the Department made its final determinations that rebar from Belarus, Indonesia, Latvia, Moldova, People's Republic of China (PRC), Poland, Republic of Korea (Korea) and Ukraine is being sold at less-than-fair-value (LTFV) (66 FR 18752; 66 FR 33522, 33531). On May 25, 2001, the U.S. International Trade Commission (the ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that a regional industry in the United States is materially injured by reason of less than fair value (LTFV) imports of subject merchandise from Indonesia, Poland, and Ukraine. On July 23, 2001, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that a regional industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Belarus, Korea, Latvia, and Moldova, and that a regional industry in the United States is threatened with material injury by reason of LTFV imports of subject merchandise from the PRC.

In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from all producers and exporters in Poland, the PRC, Korea and Ukraine. Therefore, we will instruct Customs to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption prior to the date of publication of the *Preliminary Determinations* in the **Federal Register** (66 FR 8339, 66 FR 8343, 66 FR 8348).

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further

advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of rebar from Belarus, Indonesia, Latvia, Moldova, the PRC, Poland, Korea and Ukraine. These antidumping duties will be assessed on all unliquidated entries of rebar from Belarus, Indonesia, Latvia, Moldova, Poland, Korea and Ukraine entered, or withdrawn from warehouse, for consumption on or after January 30, 2001, the date on which the Department published its notice of preliminary determinations for those countries in the **Federal Register** (66 FR 8323, 66 FR 8329, 66 FR 8333, 66 FR 8339, 66 FR 8343, 66 FR 8348). Pursuant to 736(b)(2) of the Act, the effective date of assessment of antidumping duties on all unliquidated entries of rebar from the PRC will be July 30, 2001, which is the date of the publication of the ITC's final injury determination with respect to the PRC. Therefore, we will instruct Customs to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rates apply to all exporters in Indonesia, Latvia, Poland and Korea of subject rebar not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Indonesia:	
Sakti	71.01
Bhirma	71.01
Krakatau	71.01
Perdana	71.01
Hanil	71.01
Pulogadung	71.01
Tunggal	71.01
Master Steel	71.01
All others	60.46
Poland:	
Stalexport	52.07
All others	47.13
Ukraine: Ukraine-Wide Rate	41.69
Belarus: Belarus-Wide Rate	114.53
People's Republic of China	
Laiwu Steel Group	133.00
PRC-Wide Rate	133.00
Republic of Korea	
Dongkuk Steel Mill Co., Ltd./ Korea Iron & Steel Co., Ltd.	22.89
Hambo Iron & Steel Co., Ltd.	102.28
All others	22.89
Latvia	
Liepajas Metalurgs	17.21
All others	17.21
Moldova: Moldova-Wide Rate	232.86

This notice constitutes the antidumping duty orders with respect to rebar from Belarus, Indonesia, Latvia, Moldova, the PRC, Poland, Korea and Ukraine. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act of 1930, as amended.

Dated: August 31, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–22558 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Notice of Rescission of Antidumping Duty Administrative Review: Structural Steel Beams From Japan

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

ACTION: Notice of rescission of the antidumping duty administrative review of structural steel beams from Japan.

SUMMARY: On July 23, 2001, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review on structural steel beams from Japan. This review covers six manufacturers/exporters of the subject merchandise. The period of review (''POR'') is February 11, 2000 through May 31, 2001. This review has now been rescinded as a result of a withdrawal of the request for administrative review by the interested parties.

EFFECTIVE DATE: September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Jim Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–0409 (Chen) or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''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's regulations are to the regulations at 19 CFR part 351 (2001).

Background

On June 19, 2000, the Department published the antidumping duty order on structural steel beams from Japan. See Structural Steel Beams from Japan: Notice of Antidumping Duty Order, 65 FR 37960 (June 19, 2000). On June 11, 2001, the Department published a notice of opportunity to request an administrative review of this order for the period February 11, 2000 through May 31, 2001. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 66 FR 31203 (June 11, 2001). Petitioners Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, and TXI-Chaparral Steel, Inc. (collectively ''petitioners'') timely requested that the Department conduct an administrative review of sales by Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation, Sumitomo Metal Industries, Ltd., Tokyo Steel Manufacturing Co., Ltd., and Topy Industries, Ltd., Japanese producers or exporters of subject merchandise. On July 23, 2001, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 66 FR 38252 (July 23, 2001).

Rescission of Review

Petitioners timely withdrew their request for review on July 23, 2001. There were no other requests for administrative review from an interested party. As a result, in accordance with section 351.213(d)(1) of the Department's regulations, the Department is rescinding this administrative review.

This notice 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(a)(3). Timely written notification of the 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 notice is published in accordance with section 751(a)(1) of the Act.

Dated: August 29, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 01–22555 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: International Trade Administration, Department of Commerce.

ACTION: The Department of Commerce is soliciting applications for an allocation of the 2002 tariff rate quotas on certain worsted wool fabric.

SUMMARY: The Department of Commerce (Department) hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers for an allocation of the 2002 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by 5:00 p.m. on October 9, 2001. Application forms may be obtained from that office (via facsimile or mail) or from the following internet address: http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp.

The Department will cause to be published in the **Federal Register** its determination to allocate the 2002 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants. The 2003 tariff rate quotas will be allocated at a later date.

DATES: To be considered, applications must be received or postmarked by 5:00 p.m. on October 9, 2001.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles, Apparel and Consumer Goods Industries, Room 3001, United States Department of Commerce, Washington, D.C. 20230 (telephone: (202) 482-4058). Application forms may be obtained from that office (via facsimile or mail) or from the following internet address: http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION

BACKGROUND:

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas, providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). The first tariff rate quota year commenced on January 1, 2001 and ends on December 31, 2001. In the first tariff rate quota year, 12 firms received an allocation for HTS 9902.51.11 and 15 firms received an allocation for HTS 9902.51.12. The second tariff rate quota year will commence January 1, 2002 and ends on December 31, 2002. Annual imports under 9902.51.11 are limited to 2,500,000 square meters, and annual imports under 9902.51.12 are limited to 1,500,000 square meters; these limits may be modified by the President.

The Act requires that the tariff rate quotas be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On January 22, 2001 the Department published regulations establishing procedures for allocating the tariff rate quotas. 66 FR 6459, 15 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided to the address listed above by 5:00 p.m. on October 9, 2001 in compliance with the requirements of 15 CFR 335.

Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 30, 2001.

Linda M. Conlin,

Assistant Secretary for Trade Development, Department of Commerce.

[FR Doc.01–22535 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082101C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, September 24, 2001, at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, September 25 through Friday, September 28.

ADDRESSES: The meetings will be held at NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to prepare final recommendations regarding groundfish harvest levels and management for 2002. Members of the Council's Scientific and Statistical Committee and the Groundfish Advisory Subpanel may attend to discuss the results of recent groundfish stock assessments and 2002 harvest levels. The GMT will also prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The following specific items comprise the draft agenda (1) prepare final acceptable biological catch (ABC) and optimum yield (OY) recommendations for 2002, (2) complete and/or review rebuilding plans for overfished groundfish stocks,

(3) calculate limited entry, open access, and other allocations, (4) evaluate management options for 2002, (5) complete and/or review economic/social analysis of proposed harvest levels and management measures for 2002, (6) complete the Council's Stock Assessment and Fishery Evaluation document, (7) resolve any outstanding recreational data issues and evaluate the need for inseason management adjustments, and(8) other miscellaneous Council groundfish issues.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: August 28, 2001.

Richard W. Surdi,

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

[FR Doc. 01–22554 Filed 9–6–01; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Members: Donald L. Tendick, Acting Executive Director, Chairman; R. Scott Parsons, Acting Chief of Staff; Phyllis J. Cela, Acting Director, Division of Enforcement, Andrea M. Corcoran, Director, Office of International Affairs; John C. Lawton, Acting Director, Division of Trading and Markets; David R. Merrill, Acting General Counsel, Office of General Counsel; Richard A. Shilts, Acting Director, Division of Economic Analysis.

DATES: This action will be effective on August 31, 2001.

ADDRESS: Commodity Futures Trading Commission, Office of Human Resources, Three Lafayette Centre, Suite 4100, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, Suite 4100, Washington, DC 20581, (202) 418–5003.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, August 10, 2000.

Issued in Washington, DC on August 31, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–22534 Filed 9–6–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Application for Discharge of Member or Survivor of Group Certified to Have Performed Active Duty with the Armed Forces of the Untied States; DD Form 2168; OMB Number 0704–0100.

Type of Request: Extension.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,500.

Needs and Uses: Public Law 95–202, Section 401, directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active duty. This information collection provides the necessary information to assist each of the Military Departments in determining if an applicant was a member of a group that has performed active military service. Those individuals who have been recognized as a member of an approved group are eligible for benefits provide for by laws administered by the Veterans' Administration.

Affected Public: Individual or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing. Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 23, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–22519 Filed 9–6–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History, DoD.

ACTION: Notice of Meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 25 October 2001.

Place: U.S. Army Center of Military History, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Time: 9 a.m. to 4:30 p.m. (25 October 2001).

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 2001 and those projected for FY 2002 based upon reports and manuscripts received throughout the period. And the committee will formulate recommendations through the Chief of Military History of the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 25 October 2001 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

All communications regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

Dated: August 17, 2001.

Jeffrey J. Clarke,

Chief Historian.

[FR Doc. 01–22441 Filed 9–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: September 6, 2001.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office of the Secretary of the Army are:

1. Mr. Charles T. Horner, Principal Deputy Assistant Secretary of the Army, (Financial Management & Comptroller), Office, Assistant Secretary of the Army, (Financial Management & Comptroller).

2. Ms. Judith Guenther, Director of Investment, Office, Assistant Secretary of the Army, (Financial Management & Comptroller).

3. Mr. John Miller, Director for Business Resources, Office, Assistant Secretary of the Army, (Financial Management & Comptroller).

4. Mr. Francis E. Reardon, The Auditor General, Army Audit Agency.

5. Mr. Thomas Druzgal, Deputy Auditor General, Army Audit Agency.

6. Ms. Joyce Morrow, Director, Audit Policy, Plans & Resources, Army Audit Agency.

7. Mr. Frederick R. Budd, Director, Single Agency Manager—Pentagon.

8. Dr. Henry C. Dubin, Director for Assessment & Evaluation, Office, Assistant Secretary of the Army, (Acquisition, Logistics & Technology).

9. Dr. A. Michael Andrews, Deputy Assistant Secretary of the Army, (Research & Technology)/Chief Scientist, Office, Assistant Secretary of the Army, (Acquisition, Logistics & Technology).

10. Ms. Claudia L. Tornblom, Deputy Assistant Secretary of the Army, (Management and Budget), Office, Assistant Secretary of the Army, (Civil Works).

11. Dr. Daphne Kamely, Special Assistant to the Deputy Asst Sec of the Army, (Environment, Safety & Occupational Health), Office, Assistant Secretary of the Army, (Installations & Environment).

12. Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army, (Army Review Boards Agency), Office, Assistant Secretary of the Army, (Manpower and Reserve Affairs).

13. Ms. Elizabeth Throckmorton, Assistant Deputy ASA (Civilian Personnel Policy), Office, Assistant Secretary of the Army, (Manpower and Reserve Affairs).

14. Mr. David Borland, Vice Director, Directorate of Information Systems for Command, Control, Communications & Computers.

15. MG Steven W. Boutelle, Director of Programs Architecture, Directorate of Information Systems for Command, Control, Communications & Computers.

16. Mr. John C. Speedy III, Assistant Deputy Under Secretary of the Army, (International Policy), Office, Deputy Under Secretary of the Army, (International Affairs).

17. MG Howard J. von Kaenel, Military Deputy to the Under Secretary of the Army, (International Affairs), Office, Deputy Under Secretary of the Army, (International Affairs).

18.Mr. J. Douglas Sizelove, Assistant Deputy Under Secretary of the Army, (Operations Research), Office, Deputy Under Secretary of the Army, (Operations Research).

19. Dr. Daniel Willard, Special Assistant for Air and Missile Defense, Office, Deputy Under Secretary of the Army, (Operations Research).

20. Mr. Earl H. Stockdale, Deputy General Counsel, (Civil Works & Environment), Office of the Army General Counsel.

21. Mr. Levator Norsworthy, Deputy General Counsel, (Acquisition), Office of the Army General Counsel.

22. MG Warren L. Freeman, Commanding General, District of Columbia National Guard.

The following members are added to the Performance Review Board for the U.S. Army Materiel Command:

1. Mr. Jimmy C. Morgan, Director, U.S. Army Armament and Chemical, Acquisition and Logistics Activity, U.S. Army Tank-automotive and Armaments Command.

2. Dr. Joseph A. Lannon, Director, Warheads, Energetics and Combat-Support.

3. Armaments Center, U.S. Army Tank-automotive and Armaments Command.

4. Mr. Michael P. Devine, Technical Director for Armaments.

5. U.S. Army Armament RD&E Center, U.S. Army Tank-automotive and Armaments Command.

Luz D. Oritz,

Army Federal Register Liaison Officer.

[FR Doc. 01–22440 Filed 9–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Grant of Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license for all fields of use in the manufacture, use, and sale of the Shock Absorbing Block.

DATES: Written objections must be filed not later than November 6, 2001.

ADDRESS: United States Army Corps of Engineers Research and Development Center, Waterways Experiment Station, Attn: CEERD–OP–MS (Mr. Phillip Stewart), 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Stewart, ATTN: CEERD–OP–MS; (601) 634–4113, FAX (601) 634–410; Internet *phillip.stewart@erdc.usace.army.mil;* U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: This invention relates to a novel and inexpensive shock-absorbing block or wall. Applications include crash cushion barriers on highways and around buildings. Made from scrap rubber tires and foamed concrete, the invention represents a significant advancement over currently available products. Patent number 5,863,483 claims the 1 method of making the block and patent number 5,942,306 claims the manufactured item. The United States of America, as represented by the Secretary of the Army, intends to grant an exclusive license for all fields of use in the manufacture, use, and sale of the Shock Absorbing Block to Camtek Construction Products Corporation, a company with principal offices located in Murrysville, Pennsylvania. Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Richard L. Frenette,

Counsel.

[FR Doc. 01–22442 Filed 9–6–01; 8:45 am]

BILLING CODE 3710–92–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 October 9, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 31, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: New.

Title: Application for Federal Education Assistance (ED Form 424) Clearance Package.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 17,000.

Burden Hours: 4,250.

Abstract: Need to collect information necessary for the processing of various Department of Education grant program's application packets from State and Local educational agencies, institutions of higher education. Information is used by program offices to determine eligibility and facilitate in the disbursement of program funds.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–22473 Filed 9–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–028]

ANR Pipeline Company; Notice of Negotiated Rate Filing

August 31, 2001.

Take notice that on August 23, 2001, ANR Pipeline Company (ANR), tendered for filing one Interruptible Service Agreement and a description of the essential conditions involved in agreeing to a Negotiated Rate Arrangement. ANR requests that the Commission approve the Negotiated Rate Arrangements to be retroactively effective on July 20, 2001.

ANR states that the filed Negotiated Rate Arrangement reflects a negotiated rate between ANR and Holland, City of (Inc.) for transportation service, under one transportation agreement for a period to be effective beginning July 20, 2001, until April 30, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22491 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–030]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

August 31, 2001.

Take notice that on August 22, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 71003 between Columbia Gulf Transmission Company and Virginia Power Energy Marketing, Inc. dated August 2, 2001

Transportation service is to commence November 1, 2001 under the Agreement. Columbia Gulf requests an August 2, 2001 effective date for its filing.

Columbia Gulf states that copies of the filing have been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22496 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–482–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

August 31, 2001.

Take notice on August 14, 2001, Dominion Transmission, Inc., (DTI) tendered for filing as part of its FERC Gas Tariff, the filing tariff sheets:

First Revised Volume No. 2 Effective August 15, 2001

First Original Sheet No. 4

Third Revised Volume No. 1 Effective August 8, 2001

Sub. First Revised Sheet No. 5

DTI states that the filing is being made in compliance with the Commission's letter order issued on August 8, 2001, in Docket No. RP01–482–000.

On July 9, 2001, DTI filed revised tariff sheets in Third Revised Volume No. 1 and First Revised Volume No. 2, which supercedes in their entirety, the currently effective Original Volume Nos. 2 and 2A. DTI states that it has revised its currently effective tariff to reflect the change in its corporate name from CNG Transmission Corporation to Dominion. The tariff sheets were accepted for filing, effective August 8, 2001, except that First Revised Sheet No. 5 to Third Revised Volume No. 1 was rejected. The Commission required that First Revised Sheet No. 5 be replaced to eliminate the typographical error at Rate Schedule X–49 and X–50 by replacing the name of the old contract with ''Notice of Cancellation''. DTI is filing a replacement page for First Revised Sheet No. 5 of Third Revised Volume No. 1 along with a corresponding correction in the index of First Revised Volume No. 2, Original Sheet No. 4.

DTI states that copies of its letter of transmittal have been served upon the parties to 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.

David P. Boergers,

Secretary.

[FR Doc. 01–22495 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–005]

East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

August 31, 2001.

Take notice that on August 17, 2001, East Tennessee Natural Gas Company (East Tennessee), tendered for filing copies of a Firm Transportation Service Agreement, attached as Appendix A to the filing, and a Negotiated Rate Letter Agreement, attached as Appendix B to the filing, under Rate Schedule FT–A. East Tennessee requests that the Commission grant all necessary waivers and approve the Firm Transportation Service Agreement and Negotiated Rate Letter Agreement to be effective August 17, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boegers,

Secretary.

[FR Doc. 01–22497 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–005]

Northern Natural Gas Company; Notice of Compliance Filing

August 31, 2001.

Take notice that on August 24, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 2001:

Seventh Revised Sheet No. 263
Third Revised Sheet No. 263B
Third Revised Sheet No. 263C

Northern states that the filing is being made in compliance with the Commission's Order dated July 27, 2001.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22494 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2831–000]

Tampa Electric Company; Notice of Filing

August 31, 2001.

Take notice that on August 20, 2001, Tampa Electric Company (Tampa Electric) amends its August 13, 2001 filing in Docket No. ER01–2831–000 by withdrawing the notice of cancellation of the Contract for the Purchase and Sale of Power and Energy between Tampa Electric and NP Energy Inc. (NP Energy).

The August 13 filing in Docket No. ER01–2831–000 is not withdrawn altogether. Tampa Electric continues to request that its notice of cancellation of the Service Agreement be accepted for filing and made effective August 13, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 10, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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. 01–22498 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–468–002]

Texas Eastern Transmission, LP; Notice of Errata Filing

August 31, 2001.

Take notice that on August 20, 2001, Texas Eastern Transmission, LP (Texas Eastern) submitted for filing Substitute Original Sheet No. 648 and Substitute Original Sheet No. 649 to be included in Pro Forma Seventh Revised Volume No. 1 in lieu of Original Sheet No. 648 and Original Sheet No. 649 which were filed on July 31, 2001, in compliance with Order No. 637, et seq., and in accordance with the Commission's suggestion in its June 12, 2001, letter order issued in Docket Nos. RP00–468–000 and RP01–25–000.

Texas Eastern states that a subsequent review of the scheduling and curtailment sequences for secondary transactions on Original Sheet No. 648 and Original Sheet No. 649 failed to address two potential transactions, from Secondary Receipt Points outside the Transportation Path to Primary Delivery points and from Secondary Points outside the Transportation Path to Secondary Points outside the Transportation Path. Texas Eastern states that Substitute Original Sheet No. 648 and Substitute Original Sheet No. 649 are being submitted to correct the scheduling and curtailment sequences.

Texas Eastern states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This

filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22492 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–468–003]

Texas Eastern Transmission, LP; Notice of Second Errata Filing

August 31, 2001.

Take notice that on August 24, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing Second Substitute Original Sheet No. 648 and Second Substitute Original Sheet No. 649 to be included in Pro Forma Seventh Revised Volume No. 1 in lieu of tariff sheets previously filed on July 31, 2001, in compliance with Order No. 637, *et seq.*, and in accordance with the Commission's suggestion in its June 12, 2001, letter order issued in Docket Nos. RP00–468–000 and RP01–25–000.

Texas Eastern states that on August 20, 2001 it submitted an errata filing to revise the scheduling and curtailment sequences for secondary transactions to include two additional potential transactions. Texas Eastern states that as a result of an inquiry from one of its customers it has identified the need for a further revision to the scheduling and curtailment sequences for secondary transactions to address transactions which are delivered at Secondary Delivery Points but received from Primary Receipt Points. Texas Eastern states that the second substitute tariff sheets are being submitted to further correct the scheduling and curtailment sequences.

Texas Eastern states that copies of the filing were mailed to all affected customers and interested state commissions.

Coinciding with the period granted by the Commission for Texas Eastern's July 31, 2001, compliance filing, interested parties will have until August 30, 2001, to submit comments regarding this filing. Texas Eastern has 20 days to respond to any comments received in response to this filing. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22493 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–435–011]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

August 30, 2001.

Take notice that on August 15, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission its Refund Report made pursuant to the Commission's Letter Order issued June 18, 2001 in Docket No. RP01–435–000.

Williston Basin states that on August 10, 2001, refunds were sent to applicable Rate Schedule IT–1 shippers associated with the final reconciliation of the gas supply realignment (GSR) amortization account as of June 30, 2001. These refunds included interest through August 10, 2001, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 6, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

David P. Boergers,

Secretary.

[FR Doc. 01–22469 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–28–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

August 31, 2001.

Take notice that on August 24, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to become effective August 24, 2001:

Eighth Revised Sheet No. 375

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to add a new receipt point, Point ID No. 03682 (Silvertip), to Williston Basin's Big Horn Pool. Point ID No. 03682 (Silvertip) is a new receipt point constructed to allow Williston Basin to receive natural gas for its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–22490 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–409–000]

Calypso Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Request Calypso Natural Gas Pipeline Project, Request for Comments on Environmental Issues, and Notice of a Public Scoping Meeting and Site Visit

August 31, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Minerals Management Service (MMS) will prepare an Environmental Impact Statement (EIS) that will analyze the environmental impacts of the proposed Calypso Natural Gas Pipeline Project involving construction and operation of facilities by Calypso Pipeline, L.L.C. (Calypso).[1] The proposed pipeline originates in the Bahamas and would come ashore at Port Everglades, Florida. These facilities would consist of about 41.8 miles of 24-inch diameter pipeline (approximately 36.0 miles offshore and approximately 5.8 miles onshore), a meter and pressure regulation station with a pig receiver, and 2 block valves. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida state waters review.

The application and other supplemental filings in this docket are available for viewing on the FERC Internet Web site (*www.ferc.gov*). Click on the ''RIMS'' link, select ''Docket ι'' from the RIMS Menu, and follow the instructions. General information about the MMS and detailed information regarding Florida state and Federal waters can be accessed at the MMS Internet Web site (*www.mms.gov*).

The FERC is the lead agency and the MMS is a Federal cooperating agency for this project because the MMS has jurisdiction by law as well as special expertise regarding the potential environmental impacts associated with that portion of the proposed pipeline that would be installed on the Outer Continental Shelf.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Calypso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Florida is experiencing a substantial increase in demand for electric power as a result of population growth in the state. Calypso's proposed project would transport into Florida up to 832 million standard cubic feet per day of natural gas. The project would deliver the gas to an interconnect with the Florida Gas Transmission Company (FGT) system. The Calypso Natural Gas Pipeline Project would be located onshore in Broward County, Florida and offshore in the Atlantic Ocean. The project would receive gas at the U.S./Bahamian Exclusive Economic Zone (EEZ) at a subsea connection to a 24-inch pipeline, referred to as the Grand Bahama Island Pipeline, transporting natural gas from a proposed liquefied natural gas (LNG) storage facility in Freeport, Grand Bahama Island. The LNG facility and the Grand Bahama Island Pipeline are non-jurisdictional facilities.

Hawksbill Creek LNG, Ltd., a Bahamian company, proposes to construct and operate the LNG terminal in Freeport, Grand Bahama Island that would receive LNG tankers arriving from international LNG supply locations. The LNG would be offloaded from the tankers and stored in specially designed storage tanks. From there, the LNG would be revaporized in heat exchangers on the terminal site and the resulting natural gas would be fed into the 24-inch-diameter offshore pipeline.

The FERC and MMS authorizations for this project would not extend eastward of the EEZ. The Government of the Bahamas regulates matters pertaining to the environment and safety and traditionally requires an environmental impact assessment as a condition to approving a project such as the LNG terminal and Grand Bahama Island Pipeline. The Government of the Bahamas is in the process of reviewing the environmental impact assessment for these facilities.

The LNG facility and the Grand Bahama Island Pipeline are not part of the facilities proposed in Calypso's application to the FERC. In its application, Calypso seeks authority to construct and operate the following:

• *Offshore Pipeline Segment*

The proposed offshore pipeline segment will be located in the Atlantic Ocean, off the southeast Florida coastline, and will consist of approximately 36 miles (31.2 nautical miles) of 24-inch-diameter pipeline (Offshore Pipeline). The Offshore Pipeline will traverse the Atlantic Ocean, starting at the U.S./Bahamian EEZ, passing through Federal and state waters, and ending at a shoreline entry at Port Everglades in Fort Lauderdale, Florida to connect with the proposed Calypso onshore pipeline segment.

The Port Everglades, Florida shore approach would be installed utilizing horizontal directional drilling (HDD) techniques to minimize impacts to three near-shore coral reefs. The pipeline would be directionally drilled out from an upland site at Nova Southeastern University to a point 4,616 feet from shore on the north side of the Port Everglades entrance channel. From this point, a 2,132-foot long by 25-foot wide ditch would be open cut through a spoil area to the origination of a second directional drill. The second directional drill would be used to extend the pipeline an additional 5,130 feet to the northeast exiting in about 120 feet of water. Finally, the pipeline between 120 feet and 200 feet of water would be covered with prefabricated flexible concrete mats. Where water depths exceed 200 feet, the offshore pipeline would be laid directly on the sea floor.

• *Onshore Pipeline Segment*

The proposed onshore pipeline segment will be located in Broward County, Florida and will consist of approximately 5.8 miles of 24-inch-diameter pipeline (Onshore Pipeline). The Onshore Pipeline will start at the terminus of the proposed Offshore

[1] Calypso's application was filed with the Commission on July 20, 2001, under Section 7(c) of the Natural Gas Act as amended, and Parts 157 and 284 of the Commission's regulations.

Pipeline (the Port Everglades shoreline entry) and end at a proposed interconnection with FGT's existing 24-inch Lauderdale Lateral at Mile Post (MP) 1.6 (near Florida Power & Light Company's Fort Lauderdale Plant). A block valve would be located near the beginning of the Onshore Pipeline. A pressure regulation and meter station with a pig receiver and a block valve would be located at the terminus of the Onshore Pipeline.

The proposed facilities are summarized in Tables 1 and 2 below. The general locations of the project facilities are shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project send in your request using the form in Appendix 3.

TABLE 1.—PROPOSED PIPELINE FACILITIES FOR THE CALYPSO NATURAL GAS PIPELINE PROJECT

State	Location	Diameter (inches)	Mileposts		Length (statute miles)
			Begin	End	
Federal Waters	Offshore EEZ	24	0.0	31.6	31.6
Florida Waters	Offshore	24	31.6	36.0	4.4
Florida	Broward	24	36.0	41.8	5.8
Project Total =					41.8

TABLE 2.—SUMMARY OF ANCILLARY FACILITIES FOR THE CALYPSO NATURAL GAS PIPELINE PROJECT

State	County	Facility	Approximate milepost	Description
Florida	Broward	Block Valve (Below Ground)	36.02	Nova Southeastern, University Oceanographic Center.
	Broward	Meter and Pressure Regulation Station, Pig Receiver.	41.72	Disturbed area near FPL, Fort Lauderdale Cooling Pond.
	Broward	Block Valve (Above Ground)	41.83	Located at tie-in to FGT pipeline.

Land Requirements for Construction

Construction of the onshore portion of the Calypso Natural Gas Pipeline Project would affect a total of about 68.8 acres of land including 31.9 acres required for pipeline construction; 21.4 acres required for extra workspace; 10.0 acres required for a contractor yard; and 0.5 acres required for aboveground facilities. Total land requirements for the permanent right-of-way would be about 4.6 acres and less than 0.3 acres of land would be required for the operation of the new permanent aboveground facilities. The remaining approximately 64 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 2.2 miles (38 percent) of the Onshore Pipeline would be directionally drilled or bored underground. Of the remaining 3.6 miles of the proposed route, approximately 2.8 miles (78 percent) would cross industrial/commercial land, and 3.4 miles (94 percent) would be installed parallel to existing roadway, pipeline, and utility rights-of-way. Calypso would typically use a 75-foot-wide construction right-of-way width. Additional extra temporary work areas may be necessary for waterbody, highway and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

Following construction and restoration of the right-of-way and temporary extra work spaces, Calypso would retain a new 10-foot-wide permanent easement for the 24-inch-diameter pipeline. The remaining portion of the construction right-of-way would be returned to landowners for their use without restrictions after appropriate reclamation efforts are successful.

Constructing the offshore portion of the Calypso Natural Gas Pipeline Project would affect 766 acres in Federal waters. Calypso has predicted that in Florida state waters construction of the pipeline would cause temporary direct impacts to about 1.7 acres of marine hardbottom habitat of which 0.3 acres is coral reef and the remainder is disturbed and/or transitional hardbottom habitat. Approximately 1.8 acres of sand bottom would be affected. Construction-generated sedimentation would affect an additional 4.3 acres of the spoil area, about 0.3 acres of reef, and 0.1 acres of reef-sand transition area.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This is called ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

1. Geology
2. Soils and Sediments
3. Water Resources

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this ntoice. Copies of the appendices were sent to all those receiving this notice by mail.

[3] ''We'', ''us'', ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

4. Wetlands, Barrier Beaches, and Submerged Aquatic Vegetation
5. Vegetation
6. Fish and Wildlife
7. Endangered and Threatened Species
8. Land Use, Recreation, and Visual Resources
9. Cultural Resources
10. Air Quality and Noise
11. Socioeconomics
12. Reliability and Safety
13. Alternatives

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes; affected landowners; local libraries and newspapers; other interested parties; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure that your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section of this Notice of Intent.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Calypso, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis. Currently identified environmental issues for the Calypso Natural Gas Pipeline Project include:

- Construction and operational effects on seagrasses, coral reefs, hard and soft bottom communities, mangroves, and aquatic organisms;
- Extent and effects of turbidity and sedimentation that may result from pipeline trenching and directional drilling in shallow waters;
- Potential effects of proposed shore approach on the Port Everglades entrance channel and on sensitive surface waters, including the Port Everglades and Intracoastal Waterway;
- Effects on wildlife and fisheries including essential fish habitat and fisheries of special concern, other commercial and recreational fisheries, or other species listed at the Federal, state, or local level;
- Potential fuel spills from the pipelay barges and associated vessel traffic;
- Potential effect on future land use of 27 parcels of land, and effect on 24 landowners and governmental agencies;
- Potential effects to resources and recreation associated with construction and operation in John U. Lloyd State Park;
- Potential effect to Broward County tree resources and on rare plants;
- Effect of construction on groundwater and surface water supplies;
- Potential introduction and control of non-native plant species;
- Effects on six federally endangered and threatened species including the West Indian manatee, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
- Potential effects on offshore submerged cultural resources;
- Noise generated as a result of pipeline construction;
- Disruption of local roadways and commerce during construction;
- Potential impacts on 1.7 acres of non-forested wetlands;
- Potential effect of project on designated airport runway clearance zones;
- Cumulative effects of the proposed project with other projects, including other natural gas pipelines, which have been or may be proposed in the same region and similar time frames;
- Safety of the proposed pipeline.

Public Participation and Scoping Meeting

You can be involved in this project by providing us with your specific comments or concerns. By commenting, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send one original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of the Gas/Hydro Group, PJ–11.3.

Reference Docket No. CP01–409–000.

Mail your comments so that they will be received in Washington, DC on or before September 30, 2001.

Comments may also 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 and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting is listed below.

Schedule for the Calypso Natural Gas Pipeline Project Environmental Impact Statement Public Scoping Meeting

Date and Time: September 12, 2001 at 7 pm
Location: I.T. Parker Community Center, 901 NE. Third Street, Dania Beach, FL 33004
Phone: (954) 924–3698

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the date of the meeting, the staff will also be visiting some project areas. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to

the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. As details of the project become established, representatives of Calypso may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and right-of-way easements.

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, you must return the Information Request (Appendix 3). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

David P. Boergers,

Secretary.

[FR Doc. 01–22487 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12106–000

c. *Date Filed:* August 17, 2001.

d. *Applicant:* John Floreske, Jr.

e. *Name of Project:* Flint Creek Hydroelectric Project.

f. *Location:* The proposed project would be located at the outlet works of the existing Georgetown Lake/Flint Creek Dam on Flint Creek and Georgetown Lake near the Town of Philipsburg in Granite County, Montana. Flint Creek Dam is owned by Granite County. Portions of the project are upon submerged federal lands (Deer Lodge National Forest) within both Granite and Deer Lodge Counties in Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Floreske, Jr., P.O. Box 489, Haines, AK 99827, Telephone/fax (907) 766–2899.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

Please include the Project Number (12106–000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing 55-foot-high by 525-foot-long Georgetown Lake/Flint Creek Dam, and the existing Georgetown Lake Reservoir with a surface area of 2850 acres and a storage capacity of 31,040 acre-feet at a spillway crest elevation of 6,429.5. The project would consist of: (1) Replacement of all of the existing 6,282-foot-long 52-inch-diameter woodstave flowline with 36-inch-diameter HDPE pipe except for a 120 foot section of 20-inch-diameter steel pipe flowline portion and the 36-foot-diameter 1493-foot-long steel penstock, (2) a powerhouse with an installed capacity of 1.6 MW, and (3) appurtenant facilities. There are no new transmission lines required as Montana Power Company owns and maintains the recently reconstructed transmission line which comes directly to the project's switch yard/generator building for interconnection. The project would have an annual generation of 8.3 MWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202)208–2222 for assistance). 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. A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–22488 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

August 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12105–000.

c. *Date filed:* August 7, 2001.

d. *Applicant:* Central Washington Power Agency.

e. *Name of Project:* Cle Elum Hydroelectric Project.

f. *Location:* The project would be located on the Cle Elum River in Kittitas County, Washington and would utilize the U.S. Bureau of Reclamation's existing Cle Elum Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Mark Kjelland, 1400 Vantage Highway, Ellensburg, WA 98926, (509) 933–7201 and Mr. Don Godard, Public Utility District No. 2 of Grant County, P.O. Box 878, Ephrata, WA 98823, (509) 754–0500.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and motions to intervene may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Please include the project number (P–12105–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11923–000, Date Filed: March 28, 2001, Due Date: July 9, 2001

l. *Description of Project:* The proposed project using the Cle Elum Dam and impoundment would consist of: (1) A proposed 1,000-foot-long, 12-foot-diameter steel penstock inserted in the existing outlet tunnel, (2) a proposed bifurcation to allow bypass flows to be discharged via a control valve at the original discharge point, (3) a proposed powerhouse containing two generating units having a total installed capacity of 30.4 MW, (4) a proposed 1,200-foot-long transmission line, and (5) appurtenant facilities. The project would have an annual generation of 46.8 GWh that would be either used by the members of the Power Agency or sold to another utility.

m. 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). A copy is also available for inspection and reproduction at the addresses in item h above.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued,

does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–22489 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 31, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Exempt:		
1. Project No. 2539.013	8–30–01	Tim Welch.
Prohibited:		
1 ER01–889–000	8–28–01	Commissioner Wood (Memo to File).

David P. Boergers,

Secretary.

[FR Doc. 01–22499 Filed 9–6–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6621–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (97 FR 27647).

Draft EISs

ERP No. D–AFS–J65350–MT Rating EC2, West Lake Timber Sale and Road Decommissioning Project, Implementation, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, MT.

Summary: EPA recommends including a higher level of road decommissioning in the preferred alternative, since reductions in road density are critical to aquatic health and wildlife security, including the threatened grizzly bear. Additional information should be presented regarding erosive soils, fisheries impacts and aquatic monitoring.

ERP No. D–BLM–K65233–NV Rating EC2, Falcon to Gonder 345kV Transmission Project, Construction, Resource Management Plan Amendments, Right-of-Way Grant, Lander, Elko, Eureka and White Pine Counties, NV.

Summary: EPA expressed concerns regarding the measures that would be used to minimize and mitigate project impacts to water quality. EPA recommended additional information regarding Clean Water Act Section 404 compliance, water quality mitigation measures, and polychlorinated biphenyls.

ERP No. D–COE–K39067–CA Rating EC2, Salinas Valley Water Project, Construction, Monterey County Water Resources Agency (MCWRA), Issuing of Permits or Approval of Action, Monterey and San Luis Obispo Counties, CA.

Summary: EPA expressed concern relating to impacts associated with basin hydrology, recreation, energy, potential growth inducement, riparian habitat, endangered Steelhead Salmon and the narrow scope of alternatives analyzed.

ERP No. D–COE–K39069–CA Rating LO, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Restoration and Protection of the Ecosystem for Fish and Wildlife Resources, King River Basin, Fresno County, CA.

Summary: While EPA has no objections to the action as proposed, it did request that some clarifying information be included in the FEIS.

ERP No. D–NOA–K39068–CA Rating LO, San Francisco Bay National Estuarine Research Reserve, Proposes to Designate Three Sites: China Camp State Park, Brown's Island Regional Parks District, and Rush Ranch Open Space Preserve, Contra Costa, Marin and Solano Counties, CA.

Summary: EPA had no objections to the proposed designation, but noted that anticipated facility construction or reconstruction would require supplemental environmental documentation.

ERP No. D–USN–K11106–HI Rating EC2, Programmatic EIS—Ford Island Development Program, Proposed Consolidation of Selected Operation at Pearl Harbor by Locating and Relocating Certain Activities Ford Island, HI.

Summary: EPA expressed environmental concerns due to potential water quality impacts, especially as it affects the water quality of Pearl Harbor, designated by EPA as a water quality-limited segment under the Clean Water Act. EPA requested that water quality protection measures and additional pollution prevention measures be include in future environmental documents.

Dated: September 4, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–22548 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6621–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*

Weekly receipt of Environmental Impact Statements

Filed August 27, 2001 Through August 31, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010330, Draft EIS, AFS, MT, Kelsey-Beaver Fire Recovery Project, Implementation of Fuel Reduction and Salvage of Fire-Killed Trees within Roderick South, Kelsey Creek, and Upper Beaver Areas, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Comment Period Ends: October 22, 2001, Contact: Kathy Mohar (406) 295–4693.

EIS No. 010331, Final EIS, BPA, OR, Condon Wind Project, To Execute One or More Power Purchase and Transmission Services Agreements To Acquire and Transmit up to the Full Electrical Output, NPDES Permits and Right-of-Way Permit for Public Land, Gilliam County, OR, Wait Period Ends: October 9, 2001, Contact: Sarah Branum (503) 230–5115. This document is available on the Internet at: *www.efw.bpa.gov.*

EIS No. 010332, Final Supplement, SFW, NY, VT, Lake Champlain Sea Lamprey Control Long-Term Program, Proposal is to Achieve Fish Population, Recreational Fishery and Economic Benefits Associated with Reduced Sea Lamprey Predation Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT, Wait Period Ends: October 9, 2001, Contact: David C. Nettles (802) 872–0629.

EIS No. 010333, Final EIS, CDB, CA, West Hollywood Gateway Public/Private Partnership Construction Project, Multi-Story Office, Retail, Restaurant and Entertainment Use Development, Community Development Block Grant (CDBG) Funds Issuance, City of West Hollywood, Los Angeles County, CA, Wait Period Ends: October 9, 2001, Contact: DeAnn Johnson (323) 890–7186. This document is available on the Internet at: *http://www.lacdc.org.*

EIS No. 010334, Draft EIS, IBR, CA, American River Pump Station Project, Providing Placer County Water Agency (PCWA) with the Year-Round Access to its Middle Fork Project (MFP) Water Entitlements from the American River, Placer County, CA, Comment Period Ends: October 22, 2001, Contact: Rod Hall (916) 989–7279.

EIS No. 010335, Draft EIS, FHW, CA, CA–22/West Orange County Connection Project, Transportation Improvements between Interstate 605 and State Route 55, In the cities of Los Alamitos, Seal Beach, Garden Grove, Westminster, Santa Ana, and Orange, Orange County, CA, Comment Period Ends: October 30, 2001, Contact: Robert Cady (916) 498–5038.

EIS No. 010336, Final EIS, FAA, IL, WI, IN, Chicago Terminal Airspace Project (CTAP), For Proposed Air Traffic Control Procedures and Airspace Modification for Aircraft Operations to/from the Chicago Region, Including Chicago O'Hare International Airport, Chicago Midway Airport, Milwaukee Mitchell International Airport, IL, IN and WI, Wait Period Ends: October 9, 2001, Contact: Annette Davis (847) 294–8091.

Amended Notices

EIS No. 010246, Draft Supplement, MMS, ID, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest System Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID, Due: October 11, 2001, Contact: Jeffery Cundick (208) 478–6354. Revision of FR Notice Published on 7/13/2001: CEQ Review Period

Ending on 9/11/2001 has been Extended to 10/11/2001.

EIS No. 010267, Final EIS, GSA, DC, Department of Transportation Headquarters, Proposal to Lease 1.3 to 1.35 Million Rentable Square Feet of Consolidated and Upgraded Space, Five Possible Sites, Located in the Central Employment Area, Washington, D.C., Due: August 27, 2001, Contact: John Simeon (202) 260–5786. Revision of FR notice published on 7/27/2001: CEQ Comment Period Ending 9/4/2001 has been Corrected to 8/27/2001.

EIS No. 010285, Draft Supplement, AFS, CO, Uncompahgre National Forest Travel Plans Revision, and Forest Plan Amendment, Updated Information, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray, San Juan Counties, CO, Due: October 1, 2001, Contact: Jeff Burch (970) 874–6600. Revision of FR Notice Published on 8/3/2001: CEQ Review Period Ending 9/17/2001 has been extended to 10/1/2001.

Dated: September 4, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–22549 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–60–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–128; DA 01–1967]

Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Common Carrier Bureau seeks comment on petitions for declaratory ruling, reconsideration and/or clarification filed by Bulletins, WorldCom, Inc., AT&T and Global Crossing Telecommunications, Inc.

DATES: Comments due no later than October 9, 2001. Reply comments due no later than October 22, 2001.

ADDRESSES: Federal Communications Commission, The Portals II, 445 12th Street, SW., Room 6–A207, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tania Cho of the Common Carrier Bureau, Network Services Division: by phone (202) 418–2320; by fax (202) 418–2345; by TTY (202) 418–0484; or, by email at *tcho@fcc.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2001, the Federal Communications Commission (Commission) released the *Second Order on Reconsideration,* which modified the rules governing the entity responsible for compensating a payphone service provider (PSP) for coinless calls placed from a payphone that are routed to the network of a facilities-based interexchange carrier (IXC), and then to one or more IXC resellers before being transferred to a local exchange carrier (LEC) for call completion. The modified rules provide that the first facilities-based IXC to which a LEC routes a coinless payphone call must (1) compensate the PSP for the completed call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion information to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or to bill the underlying facilities-based carrier. The first facilities-based IXC may seek reimbursement from the switchless or switch-based reseller ultimately responsible for the compensation.

Several parties have filed petitions for declaratory ruling, clarification and/or reconsideration. Bulletins seeks clarification of whether the modified rules relieve certain LECs from their obligation to compensate PSPs for coinless calls made from a payphone, and whether IXCs are provided a basis for exempting calls originated from payphones served by Competitive Local Exchange Carriers (CLECs). WorldCom, Inc. (WorldCom) seeks a declaratory ruling that a completed dial-around payphone call is defined as one that is completed on the underlying carrier's network, or one that is handed off to switch-based reseller customers that do not have prior agreements with all PSPs to pay dial around compensation. WorldCom also seeks clarification that carriers are only required to report compensable toll-free and access number calls. AT&T seeks clarification of whether its practice of compensating PSPs at the Commission-established rate for all calls that are sent to a switch-based reseller's switching platform, regardless of whether such calls are completed, is consistent with the Commission's requirements. AT&T also seeks clarification and/or reconsideration of the IXCs reporting obligations to PSPs. Global Crossing Telecommunications, Inc. (Global Crossing) requests that the Commission establish a specific timing surrogate for determining whether a particular call is completed, and therefore compensable. Global Crossing also seeks reconsideration of the reporting requirements.

Copies of the petitions will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Copies of the petitions are also available on the Commission's Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/e-file/ecfs.html* (insert CC Docket No. 96–128 into the Proceeding block). Copies of the petitions may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800, fax (202) 857–3805, TTY (202) 293–8810.

Federal Communications Commission.

Dorothy Attwood,

Chief, Common Carrier Bureau.

[FR Doc. 01–22434 Filed 9–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2034]

Fifth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on September 28, 2001, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: September 28, 2001; 10 am–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Julie Garcia, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0763.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission

(FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fifth meeting is as follows:

Agenda

Fifth Meeting of the WRC–03 Advisory Committee Federal Communications Commission 445 12th Street, SW., Room TW–C305 Washington, DC 20554

September 28, 2001; 10 am–12 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fourth Meeting
4. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Donald Abelson,

Chief, International Bureau.

[FR Doc. 01–22433 Filed 9–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010982–031.
Title: Florida—Bahamas Shipowners and Operators Association.
Parties:
Arawak Line Ltd.
Bahamas Ro Ro Services (Freeport), Inc.
Caicos Cargo Ltd. d/b/a Turks Island Shipping Line
Crowley Liner Services, Inc.
G & G Marine, Inc.
Nina APS
Pioneer Shipping, Ltd.
Seaboard Marine, Ltd.
Tropical Shipping & Construction Co., Ltd.
Synopsis: The proposed modification specifies that the space chartering authority is to apply to ad hoc, emergency or interim situations that will be reported to the Commission on a quarterly calendar year basis.

Agreement No.: 011075–058.
Title: Central America Discussion Agreement.
Parties:
King Ocean Central America, S.A.
Seaboard Marine, Ltd.
Crowley Liner Services, Inc.
A.P. Moller-Maersk Sealand
APL Co. Pte. Ltd.
Nordana Line.
Caribbean American Lines, S.A.
Synopsis: The proposed amendment adds Caribbean American Lines, S.A. as a member of the Central America section of the agreement and combines the slot chartering authority and the reporting requirement into a single section of the agreement. The amendment also clarifies that the slot chartering authority is limited to ad hoc, emergency or interim situations.

Agreement No.: 011648–006.
Title: APL/Crowley/Lykes/MLL Space Charter and Sailing Agreement.
Parties:
American President Lines, Ltd. (''APL'')
APL Co. PTE LTD.(''APL'')
Crowley Liner Services, Inc.
Lykes Lines Limited, LLC. (''Lykes'')
TMM Lines Limited
Synopsis: The proposed modification: authorizes Lykes to provide vessels (formerly provided by APL) in the U.S. Gulf/Caribbean trade; requires that permanent charges in port rotations and terminal arrangements be approved unanimously; adjusts various allocation commitments between the parties and transfer of unused spaces from one to another; provides for existing commitments to outside parties; eliminates reference to discussions regard establishing a discussion agreement; changes the minimum expiration date for the agreement; and provides for arbitration and severability.

Agreement No.: 011775.
Title: NYK/WWL South America Space Charter Agreement.
Parties:
Nippon Yusen Kaisha
Wallenius Wilhelmsen Line
Synopsis: The proposed agreement establishes a space charter agreement with authority to reach agreement on rates, terms and conditions of carriage, including terms of individually executed service contracts in the trade between all U.S. Coasts and Mexico, Central and South America and the Caribbean and points served via each. Specialized vehicle-carrying vessels are to be employed.

Agreement No.: 011776.
Title: Lykes/CSAV Slot Charter Agreement.
Parties:
Lykes Lines Limited, LLC
Compania Sud Americana de Vapores S.A.
Synopsis: The proposed agreement authorizes Lykes to charter space to CSAV in the trade between U.S. Gulf Coast ports (including Puerto Rico) and ports in the Caribbean.

Agreement No.: 011777.
Title: Lykes/CCNI Slot Charter Agreement.
Parties:
Lykes Lines Limited, LLC
Compania Chilena de Navegacion Interoceanica
Synopsis: The proposed agreement authorizes Lykes to charter space to CCNI in the trade between U.S. Gulf ports (including Puerto Rico) and ports in the Caribbean.

Agreement No.: 200233–010.
Title: Packer Avenue Lease and Operating Agreement.
Parties:
Philadelphia Regional Port Authority
Astro Holdings, Inc.
Synopsis: The proposed amendment extends the agreement through December 15, 2001.

Dated: August 31, 2001.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–22443 Filed 9–6–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4595N	Claudia C. Mayorga dba Majestic, Freight Forwarders Service, 16310 Los Alimos Street Granada Hills, CA 91344.	June 14, 2001.
3262F	GES Logistics, Inc., 235 E. Broadway, Suite 311, Long Beach, CA 90802	February 21, 2001.
16633F	Uniship, Inc., 320 Pine Avenue, Suite 400, Long Beach, CA 90802	July, 4, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–22444 Filed 9–6–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3743F.

Name: Pac-Power Freight Systems, Inc.

Address: 8366 Isis Avenue, Los Angeles, CA 90045

Date Revoked: July 30, 2001.

Reason: Surrendered license voluntarily.

License Number: 4366NF.

Name: Seven Ocean Services, Ltd.

Address: 2669 Myrtle Avenue, Suite 201, Signal Hill, CA 90806

Date Revoked: June 21, 2001.

Reason: Surrendered license voluntarily.

License Number: 1864F.

Name: Transcontinental Exports Limited

Address: 523 Old Northwest Hwy., Suite 202D, Barrington, IL 60010

Date Revoked: July 10, 2001.

Reason: Surrendered license voluntarily.

License Number: 3457F.

Name: Transport International Services

Address: 9111 Katy Freeway, Suite 312, Houston, TX 77024

Date Revoked: July 25, 2001.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–22445 Filed 9–6–01; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry (ATSDR)

Solicitation of Interested Persons To Serve as Special Consultants to the Community and Tribal Subcommittee (CTS) of the Board of Scientific Counselors, ATSDR

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces ATSDR's intent to fill 3 Special Consultant vacancies on the Community and Tribal Subcommittee of Board of Scientific Counselors ATSDR.

Background

The Community and Tribal Subcommittee is composed of four members of Board of Scientific Counselors, ATSDR. The CTS provides the board with a formal vehicle for citizens input. In 1994, three community and tribal representatives were selected to serve as Special Consultants to the CTS. At the end of their tenure, it was decided to increase the number of Special Consultants from three to eleven in order to bring a wider spectrum of representation from community and tribal members who live near hazardous waste sites, or are otherwise affected by hazardous substances in the community environment.

FOR FURTHER INFORMATION: To express interest in serving as a Special Consultant to the CTS and obtain additional information, contact: Ruby Palmer, Designated Federal Official, CTS ATSDR (E–54), 1600 Clifton Road, NE, Atlanta, GA 30033; toll-free 1–888–422–8737.

SUPPLEMENTARY INFORMATION: ATSDR conducts public health-related activities at hazardous waste sites and releases, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*). ATSDR established a Board of Scientific Counselors which is chartered under the Federal Advisory Committee Act (5 U.S.C. app.). In order to obtain input from communities and tribes located near superfund sites or hazardous waste sites, the Community and Tribal Subcommittee is recruiting three community and tribal representatives as consultants to the Subcommittee. The CTS objective is to provide BSC, ATSDR, with the views and recommendations of community and tribal representatives on ATSDR's community involvement programs, practices, policies, and other relevant issues impacting communities and tribes who live near Superfund and hazardous waste sites. The Subcommittee reviews ATSDR's community involvement programs and policies; provides advice, findings, and recommendations to the Board on these issues; and brings broad-based community and tribal involvement issues to the attention of the Board. The CTS will present its findings, advice, and recommendations to the full Board. The BSC will discuss and review reports of the Subcommittee and may forward recommendations to the Agency for action. The Community and Tribal Subcommittee will periodically meet and/or hold conference calls. A group consisting of Special Consultants, the CTS Chair and the Designated Federal Official will review the applications and develop a short list to be recommended to the Agency for consideration. The Agency, in consultation with the Board chair will then select the three community representatives to fill the vacancies, with special consideration given to the recommended slate. Accordingly, any person who lives in a community affected by a National Priority List or other hazardous waste site; who is a representative of a group that works at local, regional, or national locations with these communities; or who wishes to be considered for serving as a special consultant on this Subcommittee should write or call the ATSDR contact person listed above to obtain additional information.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

BILLING CODE 4163–70–P

Application: Please complete the following application and return it to the address listed by Monday, October 1, 2001.

Application
Community and Tribal Subcommittee
Agency for Toxic Substances and Disease Registry (ATSDR) August 15, 2001

Please answer the following questions (as legibly as possible to ensure that photocopies of it are readable) by Monday, October 1, 2001. Please send to:

Ruby Palmer
Designated Federal Official, CTS
ATSDR (E-54)
1600 Clifton Road, NE
Atlanta, GA 30033

Phone: Toll-free 1-888-422-8737
Fax: (404) 498-1744

Name: _____

Street Address: _____
City, State, Zip: _____

Telephone: _____

Fax: _____

E-mail: _____
Employment and employer(s) for last five years: _____
_____
_____

Please check the corresponding box for your response to the following questions; please keep any written responses brief.

1) Do you live in a community or on a reservation that contains a site contaminated with toxic substances or are you a member of an organization that works on environmental health/toxic substance issues with such affected communities/tribes? *Check all that apply*

_____ yes, live in such a community/reservation

_____ yes, member of such an organization

_____ no

If you checked no, please skip to question # 9.

ATSDR Community and Tribal Subcommittee Application, continued:

2) What type of site is it?

_____National Priorities List (Superfund NPL)

_____Department of Energy

_____Department of Defense

_____State

_____Not sure/don't know

_____Other

3) What is the status of site cleanup?

_____Cleanup underway

_____No work done

_____Cleanup completed

_____Not sure/don't know

4) How would you characterize your community/tribe?

_____Rural

_____ Suburban

_____Urban

_____ Tribal Lands

_____Not sure/ don't know

5) How would you characterize the racial/ethnic makeup of your community/tribe?

_____White

_____African-American

_____Hispanic

_____Asian

_____Native American

_____Mixed/ no group predominate

_____Not sure/don't know

6) How would you characterize the economic status of your community/tribe?

_____Lower income

_____Middle income

_____Upper income

_____Not sure/don't know

7) Do you believe your personal/family health has been harmed due to exposure to toxic substances in the environment?

_____Yes

_____Possibly

_____No

7a) If you are a tribal member, is contamination of traditional food supply thought to be a problem?

_____Yes

_____Possibly

_____No

ATSDR Community and Tribal Subcommittee Application, continued:

8) Are you a member of a community/tribal organization focused on the site?

_____Yes _____No

8a) If yes, please describe_____
_____
_____

9) Are you familiar with the Agency for Toxic Substances and Disease Registry (ATSDR)?

_____Yes _____No

10) Have you either sought assistance from, or previously been involved with ATSDR?

_____Yes _____No

11) Has ATSDR sponsored a health assessment or health study in your community?

_____Yes _____No _____Not sure/don't know

12) Have you attended other national or regional ATSDR meetings in the last 5 years?

_____Yes _____No

13) Are you a member of an organization – other than the one you may have noted in question 8 – focused on toxic substances/environmental health?

_____Yes _____No

13a) If yes, what is the scope of the organization?

_____Local _____Regional _____National

13b) Please describe the organization_____
_____
_____
_____

14) How many years have you been involved in toxic substance/environmental health issues?

_____Years

15) How many hours per month *on average* can you make available for telephone calls, periodic meetings, an review of materials?

_____ Hours per month

16) Have you in the past or are you now participating in an advisory group similar in structure to the Community/Tribal Subcommittee?

_____Yes _____No

16a) If yes, please describe the group and your role_____
_____
_____

17) **QUALIFICATIONS/BACKGROUND**: Please briefly note your knowledge of/ experience with toxic substance/environmental health issues. List relevant self-education/ research, workshops attended, and/or formal training._____
_____
_____
_____
_____
_____

18) **CURRENT ISSUES:** What are your views on ATSDR's current approach to working with communities/tribes?_____
_____
_____
_____
_____
_____

19) **EXPECTATIONS:** What type of input, recommendations, and advice do you envision the Subcommittee providing, and what type of outreach would you do in order to formulate your recommendations to the Board of Scientific Counselors? _____
_____
_____
_____
_____
_____

[FR Doc. 01–22504 Filed 9–6–01; 8:45 am]
BILLING CODE 4163–70–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02005]

Sexually Transmitted Disease Faculty Expansion Program; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for a Sexually Transmitted Disease (STD) Faculty Expansion Program (FEP)was published in the **Federal Register** on August 23, 2001, [Vol. 66, No. 164, Pages 44351–44354]. The notice is amended as follows:

(1) On page 44351, third column, at the beginning of sixth paragraph, under Section C. Availability of Funds, insert a sentence, ''Applicants may incur pre-award costs up to 90 days prior to the award, however, all pre-award costs are incurred at the applicants' risk.'' before the paragraph beginning ''CDC is * * * the Use of Funds section.''

(2) On page 44352 and third column, the section title ''E. Application Content'' should be replaced with ''E. Content'' and a word, ''Application'' should be inserted as a subtitle above the beginning of the last paragraph, ''The narrative should be * * * in the order presented below:''

Dated: August 31, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–22503 Filed 9–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Intravascular Catheter-Related Infections

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for Prevention of Intravascular Catheter-Related Infections,* available on the CDC website at *www.cdc.gov/ncidod/hip/ivguide.htm.* The guideline has been developed for practitioners who insert and maintain intravascular catheters and for personnel who are responsible for monitoring and preventing infections in healthcare settings. The guideline is intended to replace the *Guideline for Prevention of Intravascular Device-Related Infections* published in 1996.

DATES: Comments on the *Draft Guideline for Prevention of Intravascular Catheter-Related Infections* must be received in writing on or before October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the *Draft Guideline for Prevention of Intravascular Catheter-Related Infections* should be submitted to the Resource Center, Attention: IVGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Rd., NE, Atlanta, Georgia 30333; fax 404 498–1244; e-mail: *ivrequests@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/ivguide.htm.*

ADDRESSES: Comments on the *Draft Guideline for Prevention of Intravascular Catheter-Related Infections* should be submitted to the Resource Center, Attention: IVGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Road, NE, Atlanta, Georgia 30333; fax 404–498–1244; e-mail: *ivcomments@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/ivguide.htm.*

SUPPLEMENTARY INFORMATION: The *Draft Guideline for Prevention of Intravascular Catheter-Related Infections* is designed to provide healthcare practitioners with background information and specific recommendations to reduce the incidence of intravascular catheter-related bloodstream infections: Part I: Intravascular Catheter-Related Infections: An Overview reviews pivotal issues and controversies in intravascular catheter use and maintenance. These issues include definitions and diagnosis of catheter-related infection, barrier precautions during catheter insertion, skin antisepsis, intervals for replacement of catheters and intravenous fluids and administration sets, catheter site case, the role of specialized intravascular catheter personnel and the use of antimicrobial/antiseptic impregnated catheters, prophylactic systemic antibiotics, flush solutions, and anticoagulants. Part II: Recommendations for Prevention of Intravascular Catheter-Related Infections provides consensus recommendations of the Healthcare Infection Control Practices Advisory Committee (HICPAC) and other professional societies. Most recommendations are pertinent for the inpatient, outpatient, and home care setting, unless otherwise noted.

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, National Center for Infectious Diseases, regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections in U.S. healthcare facilities. The committee advises CDC on guidelines and other policy statements regarding prevention of healthcare-associated infections and related adverse events.

Dated: August 31, 2001.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 01–22502 Filed 9–6–01; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0370]

Preparation for ICH Meetings in Brussels, Belgium, Including Progress on Implementing of the Common Technical Document; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration is announcing a public meeting entitled ''Preparation for ICH Meetings in Brussels, Belgium, Including Progress on Implementation of the Common Technical Document'' to solicit information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Brussels, Belgium. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Brussels, Belgium, October 22 to 25, 2001, at which discussion of the Common Technical Document and other topics related to the upcoming meeting in Brussels, Belgium will take place.

Date and Time: The public meeting will be held on October 5, 2001, from 10:30 a.m. to 2 p.m.

Location: The public meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

Contact: Kimberly Topper, Center for Drug Evaluation and Research (HFD–

21), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, e-mail: Topper@cder.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations to the contact person by September 28, 2001.

If you need special accommodations due to a disability, please contact Kimberly Topper (address above) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. The ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. The ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Canadian Therapeutics Programme, and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. The current ICH process and structure can be found on the Internet at http://www.ifpma.org/ich1.html.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 12:30 and 2 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by September 28, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on September 28, 2001, under Docket No. 01N–0370, at the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: August 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–22471 Filed 9–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94P–0240]

Small Entity Compliance Guide: ''Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of March 16, 1999 (64 FR 12887), entitled ''Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, and Pectin.'' The SECG is intended to set forth the requirements of that final rule in plain language and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the SECG to Lori A. LeGault (address below). Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Lori A. LeGault, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5269.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1997 (62 FR 61476), FDA published a proposed rule to amend the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category ''Baking powder, baking soda, pectin.'' A final rule based on that proposed rule was published in the **Federal Register** of March 16, 1999 (64 FR 12887).

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Fairness Act (Public Law 104–121), FDA made available (via the Internet) a small entity compliance guide stating in plain language the requirements of this regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An

alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the SECG entitled ''Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin'' to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the SECG may also be viewed on a personal computer with access to the Internet. The Center for Food Safety and Applied Nutrition's home page includes the SECG and can be found at http://www.cfsan.fda.gov/~dms/sodaguid.html.

Dated: August 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–22481 Filed 9–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

Small Entity Compliance Guide: ''Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule that published in the **Federal Register** of December 5, 2000 (65 FR 76092), entitled ''Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution.'' The SECG is intended to set forth the requirements of that final rule in plain language and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on this SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the SECG to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., Washington, DC 20204, 202–205–4561. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT:

For the labeling provisions: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

For refrigeration provisions: Nancy S. Bufano, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–401–2022.

SUPPLEMENTARY INFORMATION:

I. Background

To reduce the risk of illness and death from consumption of eggs contaminated with *Salmonella enteritidis* (SE), FDA published in the **Federal Register** of July 6, 1999 (64 FR 36492), a proposed rule requiring the labeling of shell eggs with a safe handling statement and the refrigeration of shell eggs at retail. FDA published the final rule in the **Federal Register** of December 5, 2000 (65 FR 76092).

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602) and determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Fairness Act (Public Law 104–121), FDA made available (via the Internet) a SECG stating in plain language the requirements of this regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDAs good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the SECG entitled ''Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution'' to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the SECG may also be viewed on a personal computer with access to the Internet. Center for Food Safety and Applied Nutrition's home page includes the SECG and can be found at http://www.cfsan.fda.gov/~dms/eggsguid.html.

Dated: August 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–22482 Filed 9–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Call for Applications for the Directors Council of Public Representatives (COPR)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), the Federal government's primary agency for supporting and conducting medical research leading to the improvement in the nation's health, has established a relatively new national advisory council—the Directors Council of Public Representatives (COPR). The Chair of COPR is the Director of the National Institutes of Health. This notice describes the process for the selection of members of the COPR that NIH will use, as the original founding

members begin to complete their terms and begin the COPR rotation process.

DATES: The application deadline for the COPR is October 23, 2001; the notification of selection date is December 2001; the term start date is April 1, 2002; and the first COPR meeting date for new members is April 16, 2002.

FOR FURTHER INFORMATION CONTACT: NIH Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, telephone (301) 650–8660, fax (301) 650–7172, e-mail *COPR@pallidianpartners.com*. If you are interested in serving as a member of the COPR, please contact Palladian Partners, Inc. to have an application mailed to you or go on-line to *www.nih.gov/about/publicliaison* to access the COPR application instructions. If you have questions about your application or the submission process, please feel free to contact the staff working on this project by mail, telephone, fax, or e-mail, as indicated in the above information

ADDRESS: Please mail your application to NIH Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, telephone (301) 650–8660, fax (301) 650–7172, e-mail *COPR@palladianpartners.com*.

SUPPLEMENTARY INFORMATION: The Director of the National Institutes of Health (NIH) created the Director's Council of Public Representative (COPR) in 1999 as an important forum for information exchange between the public and the NIH at the highest level. The COPR consists up to 20 individuals who are selected from among the many diverse communities that benefit from, and have an interest in, NIH research, programs, and activities. The COPR allows representatives of the public to present issues, concerns, and viewpoints to the NIH Director and to take information from NIH back to the broader public. COPR terms are typically three-year terms.

The minimum eligibility criteria are that the applicant must:

• Have some interest in the work of NIH (such as being a patient or family member of a patient; a care giver, or a volunteer in the health or science arena; a scientist or student of science; a health communicator, educator or professional in the medical field, but certainly not limited to these examples).

• Be in a position (formally or informally) to communicate regularly with the broader public or segments of the public about the activities of the COPR and the NIH.

• Commit to participating fully in activities of the COPR, including COPR meeting discussions and conference calls, and subcommittee and/or working group activities that will take time in addition to COPR meeting attendance twice a year.

Note: The NIH will cover travel expenses while on official government business as a COPR member.

In addition, COPR members—while participating in COPR activities— will have to agree to subordinate disease-specific or program-specific interests to broader, cross-cutting matters of importance to the NIH. COPR members will also need to agree to represent as broad a ''public viewpoint'' as possible and to at least keep the spirit of this goal at the forefront during all COPR discussions and activities.

Please contact Palladian Partners, Inc. to have an application mailed to you or go on-line to *www.nih.gov/about/publicliaison* to access the COPR application instructions. The NIH Director's COPR staff is located in the Office of Communications and Public Liaison, Office of the Director, National Institutes of Health. *The application deadline is Tuesday, October 23, 2001. We will not consider late nomination packages.*

After applications are screened for completeness, they will be reviewed and scored by external reviewers who are familiar with the responsibilities of the COPR. The NIH Director will make the final selection of candidates with the goal of creating a COPR that reflects the breadth and diversity of the publics interested in the NIH, taking into consideration many varied factors, including age, gender, culture, and geography. We expect that candidates will be selected in December 2001.

Thank you for your interest in the COPR. We look forward to receiving your application packet.

Dated: August 24, 2001.

Anne Thomas,

Associate Director for Communications, NIH.

[FR Doc. 01–22467 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 5452b(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 Cancer Institute Special Emphasis Panel, Development of Novel Imaging Technology (Phased Innovation award).

Date: October 1–2, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, room 8043, Bethesda, MD 20892, (301) 496–7576.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22462 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Special Emphasis Panel, Program Project Application.

Date: October 1–3, 2001.

Time: 7:30 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Baltimore Inner-Harbor, 110 S. Eutaw Street, Baltimore, MD 21201.

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8125, Rockville, MD 20892–7405, 301/496–9236.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22463 Filed 9–6–01 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 16–17, 2001.

Time: October 16, 2001, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22458 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 2, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Dulles, 2300 Dulles Corner Blvd., Herndon, VA 20171.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Bethesda, MD 20892, 301–496–2550, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22457 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 16, 2001.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.

Contact Person: Paula S. Strickland, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard, MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22459 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications.

Date: October 1–3, 2001.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Charles Hotel, One Bennett Street, Cambridge, MA 02138.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7846, *jackson4@niehs.nih.gov*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, To Review Program Project Applications.

Date: October 26, 2001.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, South Campus, Building 101, Conference Room C, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142 NIEHS Hazardous Waste Worker Health and Safety Training; 93.143. NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22461 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, ''Non-Human Primate Immune Tolerance Cooperative Study Group''.

Date: October 29–30, 2001.

Time: October 29, 2001, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Bethesda, MD 20892, 301–496–2550, *pm158b@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22464 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 22–24, 2001.

Time: October 22, 2001, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.

Contact Person: Hagit David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22465 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.

Date: September 25, 2001.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Executive Plaza South, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ali A Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, DHHS, Bethesda, MD 20892–7180, (301) 496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Disorders, National Institutes of Health, HHS)

Dated: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22466 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 5, 2001.

Time: 9:15 am to 10:45 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@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: September 5, 2001.

Time: 10:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@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: September 5, 2001.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@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.

(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: August 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–22460 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notice, correction.

SUMMARY: In a proposed action to amend the membership provisions of the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines) published August 24, 2001 (66 FR 44638–44640), a truncated URL was provided for access to the RAC charter under the proposed amendments to Section IV–C–2. The correct URL is *http://www4.od.nih.gov/oba/rac/RACCharter.htm.*

FOR FURTHER INFORMATION: Contact OBA by e-mail at *oba@od.nih.gov*, telephone at 301–496–9838, or fax to 301–496–9839.

Correction

1. Section IV–C–2 should read, ''The RAC membership and procedures, in addition to those set forth in the NIH Guidelines, are specified in the charter for the RAC, which is filed as provided in the General Services Administration Federal Advisory Committee Management regulations, 41 CFR parts 101–6 and 102–3, and is available on the OBA website, *http://www4.od.nih.gov/oba/rac/RACCharter.htm.*''

Dated: August 30, 2001.

Sarah Carr,

Acting Director, NIH Office of Biotechnology Activities.

[FR Doc. 01–22476 Filed 9–6–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Assessment for a Major Amendment to the County of San Diego Subarea Plan of the Multiple Species Conservation Program Plan, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The County of San Diego (County) has requested a major amendment to its Subarea Plan of the Multiple Species Conservation Program (MSCP) and has forwarded this request to the Fish and Wildlife Service (Service) for approval. Our proposed action would include the Cielo Ridge and Rancho de Lusardi properties into the MSCP for incidental take authorization (including harm, injury and harassment), if necessary, of species listed as threatened or endangered pursuant to the Endangered Species Act of 1973, as amended. Take authorization may be needed during the development of homes on these properties should unlisted species covered by the MSCP become listed during the 50-year term of the permit. The County's existing incidental take permit (PRT–840414) does not apply to these amendment areas until the amendment process has been completed. These amendment lands include key core habitat areas within the County's jurisdiction that are vital to the continued existence of many of the species covered for take authorization under the County's permit. Upon completion of the amendment process, Cielo Ridge and Rancho Cielo de Lusardi would be annexed into the County's Subarea Plan, and if necessary, these properties would then be afforded take authorization pursuant to the County's permit and implementing agreement (legal contact).

This notice announces the availability of the Environmental Assessment (EA), dated January, 2001, and the Major Amendment proposed by the County. These documents describe the proposed action and possible alternatives.

DATES: Written comments should be received by the Service on or before October 9, 2001.

ADDRESSES: Comments should be addressed to Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may be sent by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Patrice Ashfield, Fish and Wildlife Biologist, [see **ADDRESSES**]; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals interested in obtaining copies of the Proposed Major Amendment and Environmental Assessment for review should immediately contact the aforementioned office [see **ADDRESSES**]. Documents will also be available for public inspection by appointment during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.) Monday through Friday at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22.

When the County completed its Subarea Plan of the MSCP, the status of several sites within the South County and Lake Hodges segments was not resolved, and these lands were designated as major or minor amendment areas. The County's take authorization does not apply to these amendment areas until the amendment process has been completed.

The County has requested a major amendment to include Cielo Ridge and Rancho Cielo de Lusardi properties into its Subarea Plan of the MSCP for incidental take authorization of species, should it be needed, during development of 11 Cielo Ridge homes and 13 Rancho Cielo de Lusardi homes. These properties are located north of the Del Dios Highway in the Santa Fe Valley, County of San Diego, California. Lands designated as major amendment areas include several properties that did not initially participate in the MSCP as the regional habitat conservation plan was being formulated. The inclusion of the proposed housing subdivisions, Cielo Ridge and Rancho Cielo de Lusardi, into the MSCP County Subarea Plan would incorporate these projects into the County of San Diego's subregional planning efforts. To this end, these proposed subdivisions have been reviewed under the County of San Diego's Biological Mitigation Ordinance and the County Subarea Plan for the MSCP and have been found by the County to be in conformance with relevant criteria and regulations.

These amendment lands include key core habitat areas within the County's jurisdiction that are vital to the continued existence of many of the species included on the County's permit. A request for a major amendment area must be processed by the Service and the California Department of Fish and Game Agencies in conformity with all applicable laws and regulations (including National Environmental Policy Act, California Environmental Quality Act, and the Endangered Species Act). Upon completion of the amendment process, Cielo Ridge and Rancho Cielo de Lusardi would be annexed into the County's Subarea Plan, and if necessary, these properties would then be afforded take authorization pursuant to the County's permit and implementing agreement.

Together Cielo Ridge and Rancho Cielo de Lusardi properties would add 87.5 acres of land into the San Diego County MSCP Subarea Plan. Approximately 36.4 acres of habitat would be impacted by the construction of 24 homes, including 30.2 acres of southern mixed chaparral, 5.3 acres of disturbed habitat, 0.1 acre of non-native grassland and 0.8 acre of eucalyptus woodland. No state or federally threatened or endangered species have been identified onsite; however, unlisted rare species occur onsite that could be listed during the 50-year term of the permit. Proposed mitigation to offset project impacts include 41.2 acres of dedicated open space, along with 10.0 acres of open space to be contained within the proposed housing lots for a total of 51.2 acres of permanent open space dedicated to the County of San Diego.

The inclusion of 51.2 acres of open space would enhance the regional preserve in this area by creating a corridor at the southern portion of the proposed residential development which extends southward to the San Dieguito River. The two sites are predominantly covered with mixed chaparral vegetation with several sensitive plant and animal species, including wart-stemmed ceanothus (*Ceanothus verrucosus*) and ashy spike-moss (*Selaginella cinerascens*). Proposed mitigation measures include onsite preservation of 71 percent of the habitat on Cielo Ridge and 45 percent of

the habitat on Rancho Cielo de Lusardi. Approximately 81 percent of the wart-stemmed ceanothus and 50 percent of the ashy spike-moss populations would be preserved within the proposed open space easements.

An addendum to the previously certified Environmental Impact Report/Environmental Impact Statement has been prepared in accordance with California Environmental Quality Act Guidelines Section 15164. The County of San Diego has determined that the proposed amendment is in conformance with the California Environmental Quality Act, the MSCP Plan, and the Biological Mitigation Ordinance.

Alternatives to the Service's proposed action include the Preferred Project Alternative which would include Cielo Ridge and Rancho Cielo de Lusardi into the MSCP and result in construction of 27 homes on 87.55 acres. The total acreage of open space from both properties under this alternative would be 48.9 acres. The No Action Alternative would result in no development of either property.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the proposed amendment, associated documents, and submitted comments to determine whether the proposed amendment meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, the County Subarea Plan of the MSCP Plan will be amended to include the Cielo Ridge and Rancho Cielo de Lusardi subdivisions. We will make a final decision no sooner than 30 days from the date of publication of this notice.

Dated: August 21, 2001.

Daniel S. Walsworth,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–22505 Filed 9–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Report/Statement for the Western Riverside County, CA, Multiple Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to the National Environmental Policy Act, the Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with the County of Riverside, California (County), a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). The County and other jurisdictions intend to request Endangered Species Act permits for up to 164 covered species including federally threatened or endangered species and unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species (including harm, injury and harassment) during urban and rural development in the approximately 1.26 million-acre (1,967 square-mile) study area in western Riverside County.

The Service is furnishing this notice to: (1) Advise other Federal and State agencies, affected Tribes, and the public of our intentions; (2) announce the initiation of a 30-day public scoping period; and (3) obtain suggestions and information on the scope of issues to be included in the EIR/EIS.

DATES: We will accept written comments until October 9, 2001.

ADDRESSES: Send comments to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 3720 Loker Avenue West, Carlsbad, CA 92008; facsimile (760) 431–9618. Information, comments and/or questions related to the preparation of the EIR and the California Environmental Quality Act process should be submitted to Ms. Kristi Lovelady; P.O. Box 1605; 4080 Lemon Street, 7th Floor; Riverside, CA 92502; facsimile (909) 955–6879.

FOR FURTHER INFORMATION CONTACT: Background information pertaining to the MSHCP may be found in the Conservation Information section of the following web page *http:/www.rcip.org/library.htm.* For additional information please contact Mr. Jeff Newman, U.S. Fish and Wildlife Service, telephone (760) 431–9440 [see **ADDRESSES** for Carlsbad Field Office]; or Ms. Kristi Lovelady, County of Riverside, telephone (909) 955–6742 [see **ADDRESSES**].

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act of 1973, as amended, and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22.

We anticipate that the County and other jurisdictions will request Endangered Species Act permits for up to 164 covered species, including 26 federally threatened or endangered species, and 138 unlisted species that may become listed during the term of the permit. The permits are needed to authorize take of listed species (including harm, injury and harassment) during urban and rural development in rapidly growing western Riverside County.

In the year 2020, the Southern California Association of Governments estimates that Riverside County will be home to approximately 2.8 million people, who will occupy approximately 918,000 dwelling units. This represents a doubling of the County's present population and housing stock. Another study by the California Department of Finance estimates that the County will continue to grow to 3.5 million people by 2030 and 4.5 million people by 2040. These residents will be located within 24 incorporated cities, as well as within numerous unincorporated areas.

The crush of the coming population boom and the challenge of balancing the associated housing, transportation, and economic needs of existing and future populations with limited natural resources and the sensitivity of the natural environment required Riverside County to develop a unique planning model. This model, known as the Riverside County Integrated Project, consists of three integrated regional planning efforts to determine future

land use, transportation, and conservation needs for the County. The goals of the effort are three-fold:

1. Update the County's General Plan to describe anticipated future growth over the long term. The General Plan is meant to express the community's goals with respect to both the man-made and natural environments, and set forth the policies and implementation measures needed to achieve those goals for the welfare of those who live, work, and do business in the County. The County's General Plan is being prepared and integrated with the MSHCP. The County is preparing an EIR to address the environmental impacts of the implementation of the County's proposed General Plan.

2. Identify transportation corridors to meet the County's future transportation needs through the Community Environmental and Transportation Acceptability Program (CETAP). The CETAP transportation program is a multi-modal planning effort that considers not only highway options, but also looks at transit and other forms of travel demand management and goods movement. The MSHCP is expected to address the growth facilitating effects of the CETAP corridors and to facilitate requisite environmental clearances for such corridors. Riverside County and the Federal Highway Administration (lead agency for the National Environmental Policy Act) are also preparing two EIR/EISs to address the environmental impacts of the proposed CETAP corridors.

3. Create a MSHCP for the western portion of the County, and integrate ongoing preparation of the Coachella Valley Multi-Species Habitat Conservation Plan into the fabric of comprehensive planning for the County. The western Riverside County MSHCP, which is the subject of this notice, will identify activities resulting in the incidental take of covered species and those actions necessary to conserve these species within a regional reserve system.

Proposed Action and Alternatives To Be Evaluated

In anticipation of receiving permit applications from the County and other jurisdictions, the Service will prepare a joint EIR/EIS with the County, lead agency for the MSHCP. The Service's proposed action is to consider approval of the MSHCP and issuance of incidental take permits to the County and other jurisdictions.

The County's proposed MSHCP will be a comprehensive plan that seeks to conserve up to 164 species within a reserve system of approximately 510,000 acres pursuant to State and Federal endangered species laws. The MSHCP would establish a reserve system, with a focus on conserving species and the habitats upon which they depend, through conservation and management. The MSHCP will describe strategies to conserve federally listed and unlisted species and their habitats identified for inclusion and management, while allowing incidental take of endangered and threatened species associated with development. Development may include residential, commercial, industrial, and recreational development; public infrastructure such as roads and utilities; and maintenance of public facilities. This plan is intended to allow the County and other participating jurisdictions to retain local control over land use decisions, provide for critical public infrastructure projects, and sustain economic growth.

The EIR/EIS for the MSHCP will assist the Service during its decision making process by enabling us to analyze the environmental consequences of the proposed action and a full array of alternatives identified during preparation of the MSHCP. Although specific alternatives have not been prepared for public discussion, the range of alternatives preliminarily identified for consideration include:

1. The No Action/No Project alternative. Conservation would rely on existing or future amended General Plans, growth management programs, habitat management efforts, and continuing project-by-project review and permitting pursuant to the National Environmental Policy Act and sections 7 and 10 of the Endangered Species Act;

2. An alternative for enhanced management of the existing preserves within western Riverside County.

3. A potential conservation scenario for only currently listed and proposed species (i.e., approximately 29 species);

4. A potential conservation scenario for only currently listed, proposed, and certain candidate species (i.e., approximately 36 species); and

5. A more-robust, broad-based ecosystem conservation alternative.

Potentially Significant Impacts of Implementation of the MSHCP

Potentially significant impacts could occur with the implementation of the MSHCP alternatives. These could include impacts to biological resources, land use and planning (land use development patterns), mineral resources, population, housing, economics, and public services (fire protection and parks). For all significant impacts, the EIR/EIS will identify mitigation measures, where feasible.

The following issues will be addressed in the EIR/EIS.

Biological Resources

Incidental take of federally listed species would result from activities covered under the MSHCP. The impacts of take will be discussed in the EIR/EIS. In addition, the implementation of the MSHCP may facilitate development in areas not required for the reserve system, which may result in impacts to species in these areas. These potential impacts related to biological resources will be further addressed in the EIR/EIS.

Land Use and Planning

Included within the MSHCP planning area are 14 cities, State, Federal, and other public jurisdiction lands. Preservation of lands within the proposed MSHCP reserve system may conflict with existing and/or planned policies with respect to land use. The EIR/EIS will address potential MSHCP consistency with local, State and federal land use policies.

Mineral Resources

There may be lands now designated that would not be available for mineral resource extraction as a result of the adoption of the MSHCP. This will be addressed in the EIR/EIS.

Population, Housing, and Economics

The adoption of the MSHCP could cause a change in the distribution, density, or pattern of growth in western Riverside County. With implementation of the MSHCP, growth and development patterns could be shifted from the rural residential and suburban areas to urban centers and community nodes where there is increased access to infrastructure and transportation facilities.

Public Services (Fire Protection and Parks)

The risk of fire could increase at the habitat edges adjacent to existing development. Fire protection impacts will be discussed in the EIR/EIS. While the MSHCP will include a public access component to define potentially compatible activities such as trails, trail heads, and passive recreation, some recreational facilities currently being planned by jurisdictions for areas where core reserves and linkage areas are proposed, may have to be redesigned or relocated. The potential need to relocate a public service or recreational facility will be examined in the EIR/EIS.

Transportation/Traffic

The proposed MSHCP reserve may require eliminating, re-aligning, or

designing specific features to avoid and minimize the incidental take of covered species for some planned facilities and programs that support various modes of transportation. The EIR/EIS will analyze these potential impacts.

Indirect Impacts (Growth Inducement)

Authorization of take with the implementation of the MSHCP could remove an impediment to development. This potential impact will be analyzed in the EIR/EIS.

Scoping

We invite the public to participate in the scoping process, review the draft EIR/EIS, and attend public meetings. The location and time of the scoping meetings to be scheduled during the month of September 2001 will be announced in the local news media. We invite comments from all interested parties to ensure that the full range of issues related to the permit requests are addressed and that all significant issues are identified.

We expect a draft EIR/EIS for the MSHCP to be available for public review in Winter 2002. Release of the draft EIR/EIS for public comment and the public meetings will be announced in the local news media, as these dates are established.

Regulatory Authority

We will conduct environmental review of the permit applications in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.), its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations.

Dated: August 23, 2001.

Mary Ellen Mueller,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–22506 Filed 9–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Modification to Consent Decree Under the Clean Water Act

Under 28 CFR 50.7 notice is hereby given that on August 20, 2001, a proposed Second Modification To Consent Decree (''Second Modification'') in *United States and State of Indiana* v. *City of Boonville*, Civil Act No. EV 84–187–C–Y/H was lodged with the United States District Court for the Southern District of Indiana.

In this action, the United States sought injunctive relief and civil penalties for violations of the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.*, and terms and conditions of an National Pollutant Discharge Elimination System (''NPDES'') permit governing discharges of pollutants from a publicly owned treatment works (''POTW'') operated by the City of Boonville, Indiana (''City''). Following entry of a Consent Decree in 1987 and entry of a Joint Stipulation and Order (''JSO'') modifying the Consent Decree in 1991, the United States sought additional relief and stipulated penalties as a result of the City's failure to complete construction of required POTW improvements in accordance with schedules set forth in the Consent Decree as modified by the JSO.

The proposed Second Amendment provides a modified schedule for the completion of some of the other remaining remedial work necessary for the City to obtain compliance with its NPDES permit and the Consent Decree, as modified by the JSO. Also, under the Second Modification the City will pay $61,000.00 as stipulated penalties to the United States of America and the State of Indiana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Second Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of Boonville*, Civil Action No. EV 84–187–C–Y/H, D.J. Ref. 90–5–1–1–2071B.

The Second Modification may be examined at the Office of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, Indiana, 46204–3048, and at U.S. EPA Region V, 77 W. Jackson Blvd., (C–14J), Chicago, Illinois, 60604–3590. A copy of the Second Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.00 (.25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–22446 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Desmond,* Civ. No. 01–CV–11425–RGS (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on August 20, 2001. This proposed Consent Decree concerns a complaint filed by the United States of America against Robert Desmond, Esq., of Chestnut Hill, Massachusetts, pursuant to section 309 (b), (d) and (g), of the Clean Water Act, 33 U.S.C. 1319 (b), (d) and (g), to obtain injunctive relief and impose civil penalties against the Defendant for unlawfully discharging dredged or fill materials into waters of the United States in Taunton, Bristol County, Massachusetts, for failing to comply with the terms of a March 30, 1998 administrative order, issued in accordance with Clean Water Act section 309(a), 33 U.S.C. 1319(a), requiring the completion of a restoration plan; and for failing to comply with the terms of a June 21, 1998 ''Administrative Consent Agreement and Final Order,'' under Clean Water Act section 309(g), 33 U.S.C. 1319(g), which directed the Defendant to pay a penalty of $12,500 by July 31, 1998.

The proposed Consent Decree requires the Defendant to pay a civil penalty in the amount of $10,000, for its several alleged violations of the Clean Water Act. The Defendant is required to pay an additional penalty of $48,478.47, reflecting payments owed to the United States under the CAFO, unless the Defendant proves to the satisfaction of the United States, within 90 days of entry of the Consent Decree, that he paid $12,500 to the United States on or before July 31, 1998. Finally, the proposed Consent Decree enjoins the Defendant and his agents from discharging any pollutant into waters of the United States unless such discharge complies with the provisions of the Clean Water Act and its implementing regulations.

The Department of Justice will receive written comments relating to this

proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, DC 20026–3986. Please refer to the matter of *United States* v. *Robert Desmond,* DJ Reference No. 90–5–1–1–06024.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, Suite 2300, 1 Courthouse Way, Boston, MA 02210–3002. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http//www.usdoj.gov/enrd/enrd-home.html.*

Scott A. Schacter,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 01–22447 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Mallory Creek Developers, Inc., et al.*, Case No. 7:01–CV–163–F1 (E.D.N.C.), was lodged with the United States District Court for the Eastern District of North Carolina on August 22, 2001. The proposed Consent Decree concerns alleged violations of sections 301(a), 402, and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342 and 1344, resulting from Defendant's unauthorized discharge of pollutants into waters of the United States at the Mallory Creek Developers Site located on the west side of State Highway 133, in Brunswick County, North Carolina.

The proposed Consent Decree would require the payment of a civil penalty of $100,000 and completion of site restoration activities, including the filling of ditches.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to S. Randall Humm, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Mallory Creek Developers, Inc., et al.*, Case No. 7:01–CV–163–F1 (E.D.N.C.)

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, 310 New Bern Avenue, Federal Building, 5th Floor, Raleigh, North Carolina.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 01–22448 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 243–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following systems of records—previously published July 8, 1997 (62 FR 36572) and October 10, 1995 (60 FR 52697), respectively:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A

Alien Status Verification Index (ASVI), JUSTICE/INS–009

INS proposes to add six new routine use disclosure provisions, identified as R, S, T, U, V, and W and to appropriately edit routine use J to JUSTICE/INS–001A. Routine use R permits disclosure of information from this system of records to appropriate health authorities that perform required medical examinations on individuals entering the United States. Release of this information assists these individuals in performing their oversight responsibilities. Routine use S ensures that the system of records is in compliance with the requirements of section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Routine use T allows contractors access to INS information when performing a function on its behalf. Routine use U is necessary to assist other government agencies in the performance of their law enforcement functions. Routine use V is necessary to permit disclosure of information on individuals from this system to the Social Security Administration (SSA) so that the SSA will be able to issue valid social security numbers to certain aliens who have made a request for a social security number and card as part of the immigration process and in accordance with agreements in place between the INS, SSA and the Department of State. These interagency agreements, which are authorized by specific SSA regulations, concern the sharing of information on aliens so that the SSA may issue them social security numbers and appropriate cards if the aliens so request. Finally, routine use W allows disclosure to former employees when the Department requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility. (This routine use is also being added in JUSTICE/INS–009 as J.)

In INS–001A, Routine uses D and F includes an additional source, tribal governments. Routine use J required editing because no routine use is necessary to allow the applicant, petitioner, and/or respondent access to their record.

Also, the following sections have been modified. The ''Categories of Records'' portion in the system has been edited to include photographs as another form of information within the system. The ''Retention and Disposal'' section has been edited to reflect the actual language approved by the National Archives and Records Administration (NARA). Finally, the ''Record Source'' and ''Systems Exempted From Certain Provisions of the Act'' portions have been edited to improve clarification of the system.

Secondly, INS proposes to add three new routine use disclosures to JUSTICE/INS–009, identified as H, I, and J. Routine use H ensures that the system of records is in compliance with the requirements of Section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Routine use I clarifies those entities having access to ASVI via partnership in the SAVE program. Lastly, routine use J has been added as explained above. Also, routine uses A, B, D, and F are being edited to clarify the system description (*e.g.,* include an additional source, tribal governments; and amend the use of ASVI data). The ''Retention and Disposal'' section has been edited to reflect that the disposition schedule is no longer pending. Other minor corrections or edits have been made to the following sections, ''Record Source'' and ''Systems Exempted From Certain Provisions of the Act.''

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on proposed system modifications and new routine use disclosures. The Office of

Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments (by 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modifications.

Dated: August 21, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other INS file control offices in the United States and foreign countries as detailed in JUSTICE/INS–999, last published April 13, 1999 (64 FR 18052). Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, or who were investigated by the INS in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informants having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized indexing system contains personal identification data such as A-File number, date, and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the ''A-file.'' Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the ''A-file'' which is described in B. below.

B. The hard copy A-file (prior to 1940 was called Citizenship File (C-File)) contains all the individual's official record material such as naturalization certificates; various forms (and attachments, e.g., photographs), applications and petitions for benefits under the immigration and nationality laws, reports of investigations; statements; reports; correspondence; and memoranda on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 8 U.S.C. 1360), and the regulations pursuant thereto.

PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

C. To other federal, state, tribal, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws, to elicit information required by INS to carry out its functions and statutory mandates.

D. To a federal, state, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

E. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to the litigation or has an interest in the litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: (1) INS, or any subdivision thereof, or (2) any employee of INS in his or her official capacity, or (3) any employee of INS in his or her individual capacity when the Department of Justice has agreed to represent the employee, and (4) the United States, where INS determines that the litigation is likely to affect it or any of its subdivisions.

F. To a federal, state, tribal, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan 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.

G. To a federal, state, local or foreign government agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

H. 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 the Circular.

I. To other federal agencies for the purpose of conducting national intelligence and security investigations.

J. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before INS or the Executive Office for Immigration Review.

K. To a federal, state, tribal, or local government agency to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the United States Government, and/or to obtain information that may assist INS in collecting debts owned to the United States Government; to a foreign government to assist such government in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to it provided that the foreign government in question (a) Provides sufficient documentation to establish the validity of the stated purpose of its request, and (b) provides similar information to the United States upon request.

L. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work-study program pursuant to 42 U.S.C. 2751 *et seq.*

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

N. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

O. To the General Services Administration and the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

P. To an obligor who has posted a bond with the INS for the subject. INS may provide only such information as either may (1) aid the obligor in locating the subject to insure his or her presence when required by INS, or (2) assist the obligor in evaluating the propriety of the following actions by INS: either the issuance of an appearance demand or notice of a breach of bond—*i.e.*, notice to the obligor that the subject of the bond has failed to appear which would render the full amount of the bond due and payable.

Q. To an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

R. Consistent with the requirements of the Immigration and Nationality Act, to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or to any state or local health authorities, to provide proper medical oversight of INS-designated civil surgeons who perform medical examinations of both arriving aliens and of those requesting status as a lawful permanent resident, and to ensure that all health issues potentially affecting public health and safety in the United States are being or have been, adequately addressed. In addition, the names, addresses, and telephone numbers of designated civil surgeons are routinely provided to the CDC to enable the CDC to send its technical instructions to the designated civil surgeons.

S. To a federal, state or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

T. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

U. To the appropriate agency/organization/task force, regardless of whether it is federal, state, local, foreign, or tribal, charged with the enforcement (e.g., investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

V. To the Social Security Administration (SSA) for the purpose of issuing a social security number and card to an alien who has made a request for a social security number as part of the immigration process and in accordance with any related agreements in effect between the SSA and the Immigration and Naturalization Service and/or the Department of State entered into pursuant to 20 CFR 422.103(b)(3); 422.103(c); and 422.106(a), or other relevant laws and regulations.

W. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file and C-file records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records that can be accessed electronically are stored in a database on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by an individual's A-file or C-file number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces that are locked during non-duty office hours. Many records are stored in cabinets, open shelving, or machines that are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the date the file is retired to the Federal Records Center or date of last action (whichever is earlier) and then destroyed. C-file records are to be destroyed 100 years from March 31, 1956. Automated master index records are permanent and will be transferred to NARA in 2005.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Assistant Commissioner, Office of Records Services, Immigration and Naturalization Service, 425 Street NW, Fourth Floor, Union Labor Life Building, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, last

published in the **Federal Register**, April 13, 1999(64 FR 18052).

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G–639, FOIA/PA Request, may be obtained from the nearest INS office and used to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Request.'' The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals —generally, individuals covered by this system of records—on Department of State and INS applications and forms. Other information comes from inquiries or complaints from members of the general public and members of Congress; referrals of inquiries or complaints directed to the President or Attorney General; INS reports to investigations, sworn statements, correspondence, official reports, memoranda, and written referrals from other entities, including federal, state, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act. These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). INS has published implementing regulations in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and these have been published in the **Federal Register** and can be found at 28 CFR 16.99.

Justice/INS–009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), 425 I Street NW, Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are applicants, petitioners, beneficiaries, or possible violators of the Immigration and Nationality Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records include index and file locator data such as last and first name, alien registration number (or ''A-file'' number), date and place of birth, social security account number, date coded status transaction data and immigration status classification, verification number, and an employment eligibility statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 101 and 121 of the Immigration Reform and Control Act of 1986; Section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; 8 U.S.C. 1360; 8 U.S.C. 1324a; 8 U.S.C. 1373; 8 U.S.C. 1642; 20 U.S.C. 1091; 42 U.S.C. 1320b-7; 42 U.S.C. 1436; and Executive Order 12781.

PURPOSE:

This system of records is used to verify the individuals' immigrant, nonimmigrant, and/or eligibility status for any purpose consistent with INS statutory responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Relevant information contained in this system of records may be disclosed as follows:

A. To a federal, state, tribal, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning the (1) hiring or retention of an employee; (2) issuance of a security clearance; (3) reporting of an investigation of an employee; (4) letting of a contract; (5) issuance of a license or grant; or (6) determination of eligibility for a federal, state, or local program or other benefit. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. INS will assign appropriate access codes for remote access through secured terminals to agencies which are to perform their own automated verification. Records may also be disclosed to these agencies for use in computer matching programs for the purpose of verifying eligibility of applicants for federal, state, or local programs or benefits.

B. To any person or entity, *e.g.,* employers, agents of employers, state employment agencies, etc., authorized or required by law to participate in an employment verification program, any information which will enable such persons or entities to verify eligibility to work in the United States in compliance with the employer sanctions provisions of the Immigration Reform and Control Act of 1986. Such persons or other entities are assigned secure access codes and will have access through electronic means.

C. To the private contractor for maintenance and for other administrative support operations (e.g., preparing for INS management reimbursable cost reports etc. based on user access), to the extent necessary to perform such contract duties.

D. To other federal, state, tribal, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

E. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff request the information on behalf of and at the request of the individual who is the subject of the record.

G. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. To a federal, state, tribal, or local government agency participating in the INS Status Verification Program seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

I. To a person or entity authorized by a federal, state, tribal or local government agency to act as the agency's contractor, agent, grantee, or designee with respect to ascertaining or verifying immigration status for any purpose consistent with INS statutory responsibilities, and/or are otherwise authorized by law. INS would disclose to such person or entity only to the extent that it would otherwise disclose to the authorizing federal, state, tribal or local government agency pursuant to an applicable Privacy Act disclosure provision.

J. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice Orders governing security of automated records and Privacy Act systems of records. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Information is destroyed when no longer needed.

SYSTEM MANAGER AND ADDRESS:

The Director, SAVE Branch, Immigration and Naturalization Service, 425 I Street NW, First Floor, Union Labor Life Building, Washington, DC 20536, is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked ''Privacy Act Request.'' The requester shall include the name, date and place of birth of the person whose record is sought and if known the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the System Manager or to the INS office that maintains the file. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–22449 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 244–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following systems of records:

1. The Asset Management Information System (AMIS), JUSTICE/INS–004, April 27, 1998, (63 FR 20651);

2. INS Bond Management Information System (BMIS), JUSTICE/INS–008, December 18, 1998, (63 FR 70159);

3. INS Password Issuance and Control System (PICS), JUSTICE/INS–011, March 2, 1989, (54 FR 8838);

4. INS Port of Entry Office Management Support System (POMS), JUSTICE/INS–015, June 14, 1990, (55 FR 24167);

5. INS Global Enrollment System (GES), JUSTICE/INS–017, March 13, 1997, (62 FR 11919);

6. INS Attorney/Representatives Complaint/Petition Files, JUSTICE/INS–022, December 16, 1999, (64 FR 70288);

7. INS Law Enforcement Support Center Database, JUSTICE/INS–023, May 14, 1997, (62 FR 26555);

8. FD–258 Fingerprint Tracking System, JUSTICE/INS–024, July 31, 2000, (65 FR 46741); and

9. Hiring Tracking System (HITS), JUSTICE/INS–026, December 16, 1999, (64 FR 70291).

The INS has modified the above noted systems of records to include a new routine use that allows disclosure to contractors working on behalf of INS to have access to necessary information to assist INS with its operations.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the routine use disclosure. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by October 9, 2001. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, United States Department of Justice, Washington, DC 20530–0001 (Room 1400, National Place Building).

A description of the modification to the INS'' systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: August 21, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

SYSTEM NAMES:

JUSTICE/INS–004, The Asset Management Information System (AMIS)

JUSTICE/INS–008, INS Bond Management Information System (BMIS)

JUSTICE/INS–011, INS Password Issuance and Control System (PICS)

JUSTICE/INS–015, INS Port of Entry Office Management Support System (POMS)

JUSTICE/INS–017, INS Global Enrollment System (GES)

JUSTICE/INS–022, INS Attorney/Representatives Complaint/Petition Files

JUSTICE/INS–023, INS Law Enforcement Support Center Database

JUSTICE/INS–024, FD–258 Fingerprint Tracking System

JUSTICE/INS–026, Hiring Tracking System (HITS)

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

* * * * *

[FR Doc. 01–22450 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2001, and published in the **Federal Register** on April 6, 2001, (66 FR 18305), Ansys Technologies, Inc., 25200 Commercentre Drive, Lake Forest, California 92630, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (PCC) (8603).	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce standards and controls for in-vitro diagnostic drug testing systems.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ansys Technologies, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ansys Diagnostics, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 27, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–22454 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 7, 2001, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
1-[1-2(2-Thienyl) cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 6, 2001.

Dated: August 27, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–22452 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 4, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2004), Noramco of Delaware, Inc., Division of McNeilab, Inc., which has changed its name to Noramco of Delaware, Inc., Division of Ortho-McNeil, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the

company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 27, 2001.

Laura M. Nagel,

Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–22455 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 4, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2005), Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a derivative of cocaine in gram quantities for validation of synthetic procedures.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 832(a) and determined that the registration of Organix, Inc. to manufacture is consistent with the public interest at this time. DEA has investigated Organix, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 27, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–22453 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 21, 2001, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Thebaine (9333)	II

The firm plans to produce bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 6, 2001.

Dated: August 27, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–22451 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 4:30 p.m. on Monday, November 5, 2001 & 8:30 a.m. to 12 noon on Tuesday, November 6, 2001.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue NW., Washington, DC 20001.

Status: Open.

Matters To Be Considered: Division Reports, Updates on Strategic Planning, Interstate Compact Activities, and Plan Colombia; Presentations on Violation/Revocation/Reentry and Job Stress in Corrections; and Report on Institutional Cultural Project.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 01–22531 Filed 9–6–01; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 30, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or email *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of

the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

OMB Number: 1210–0105.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 10.

Number of Annual Responses: 10,000.

Estimated Time Per Response: 2 minutes.

Total Burden Hours: 333.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $5,000.

Description: Plans may be exempted from Mental Health Parity Act of 1996 requirements of parity between dollar limits on medical/surgical and mental health benefits if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. This ICR covers notice to participants and beneficiaries and to the federal government when a plan elects the increased cost exemption.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: 1210–0106.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 10.

Number of Annual Responses: 200.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 10.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $100.

Description: The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and issuers. Upon receipt of notice that a plan claims exemption from these requirements, participants and beneficiaries may request a summary of the information on which the exemptions was based.

The information collection request (ICR) found in the interim rules at 29 CFR 2590.712(f)(4) requires the plan to maintain group health plan claims and administrative expense records in such a way that they can be used to demonstrate the applicability of the one percent cost increase exemption as defined in the interim rules, and that a summary of that information can be provided at the request of participants and beneficiaries, or their representative at no charge.

This ICR covers the calculation and disclosure of information on which the exemption was based.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Form 5500 Annual Information Return/Report of Employee Benefit Plan.

OMB Number: 1210–0110.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; and Farms.

Frequency: Annually; On Occasion.

Number of Respondents: 863,682.

Number of Annual Responses: 863,682.

ESTIMATED TIME PER RESPONSE: [1]

	Pension plans		Welfare plans	
	Large	Small	Large	Small
Form 500	1 hr., 44 min	1 hr., 6 min	1 hr., 38 min	1 hr., 5 min.
Schedule A	1 hr., 41 min	53 min	8 hr., 10 min	2 hr., 11 min.
Schedule B	6 hr., 38 min	31 min.		
Schedule C	1 hr., 17 min		52 min.	
Schedule D	10 hr	10 hr.		
Schedule E	3 hr., 18 min	3 hr., 18 min.		
Schedule F			45 min	26 min.
Schedule G	11 hr., 58 min		6 hr., 28 min.	
Schedule H	7 hr., 56 min		3 hr., 22 min.	
Schedule I		1 hr., 28 min		1 hr., 28 min.
Schedule P	13 min	2 min.		
Schedule R	1 hr	30 min.		
Schedule SSA	6 hr., 10 min	1 hr., 42 min.		
Schedule T	4 hr., 40 min	37 min.		

[1] The time needed to complete and file the forms listed above reflects the combined requirements of the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation, and the Social Security Administration. These times will vary depending on individual circumstances.

Total Burden Hours: 1,847,163.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $546,789,000.

Description: Part 1 of Title I and Title IV of the Employee Retirement Security Act of 1974, as amended, and the Internal Revenue Code, require administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) to file return/reports annually concerning, among other things, the financial condition and operation of plans. These annual reporting requirements are satisfied generally by filing the Form 5500.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 01–22528 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 27, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment and Training Administration (ETA).

Title: Workforce Investment Act (WIA) Employment and Training Administration (ETA) Financial Reporting Requirements for National Farmworkers Jobs Program (NFJP) Under Title I of the Act

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 53.

Number of Annual Responses: 636.

Frequency: Quarterly.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 636.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Financial data information collection requirements for the Workforce Investment Act (WIA) Title I programs are contained in the Public Law 105–220, dated August 7, 1998 and WIA Final Rule, 20 CFR 652, *et al.*, dated August 11, 2000.

DOL regulations Part 669—National Farmworkers Jobs Program Under Title I of the Workforce Investment Act, Subpart A, 669.170(b) specifies what WIA regulations apply to the programs funded under WIA section 167. This section states that the general administrative requirements found in 20 CFR part 667 apply, which include reporting requirements at 667.300. This section specifies quarterly financial reporting no later than 45 days after the end of each quarter for all WIA Title I grantees.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 01–22530 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration Notice

Revised Schedule of Remuneration for the UC Program

Under Section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX).

This Notice is to publish a revised schedule that reflects increases in military pay and allowances which were effective in July 2001.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12(c), applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins on or after October 1, 2001.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	$13,903
0–9	13,103
0–8	12,088
0–7	10,973
0–6	9,234
0–5	7,740
0–4	6,399
0–3	5,087
0–2	4,025
0–1	3,074
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,981
0–2E	4,889
0–1E	4,110
(3) Warrant Officers:	
W–5	6,761
W–4	5,829
W–3	4,855
W–2	4,152
W–1	3,544
(4) Enlisted Personnel:	
E–9	5,417
E–8	4,545
E–7	4,025
E–6	3,524
E–5	2,948
E–4	2,480
E–3	2,204
E–2	2,111
E–1	1,927

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time for which any prior schedule was in effect.

Signed at Washington, DC, on August 24, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary.

[FR Doc. 01–22529 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar

character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specifed classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume IV

Michigan
MI010104 (Sept. 7, 2001)
MI010105 (Sept. 7, 2001)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT010001 (Mar. 2, 2001)
CT010003 (Mar. 2, 2001)
CT010004 (Mar. 2, 2001)
New Hampshire
NH010001 (Mar. 2, 2001)
New Jersey
NJ010002 (Mar. 2, 2001)
NJ010009 (Mar. 2, 2001)
Vermont
VT010001 (Mar. 2, 2001)
VT010011 (Mar. 2, 2001)
VT010013 (Mar. 2, 2001)
VT010041 (Mar. 2, 2001)
VT010043 (Mar. 2, 2001)

Volume II

Pennsylvania
PA010004 (Mar. 2, 2001)
PA010006 (Mar. 2, 2001)
PA010028 (Mar. 2, 2001)
Virginia
VA010014 (Mar. 2, 2001)
West Virginia
WV010003 (Mar. 2, 2001)

Volume III

Alabama
AL010034 (Mar. 2, 2001)
Florida
FL010001 (Mar. 2, 2001)
FL010009 (Mar. 2, 2001)
FL010017 (Mar. 2, 2001)
FL010032 (Mar. 2, 2001)
FL010034 (Mar. 2, 2001)
FL010100 (Mar. 2, 2001)
South Carolina
SC010037 (Mar. 2, 2001)
Tennessee
TN010002 (Mar. 2, 2001)
TN010003 (Mar. 2, 2001)
TN010018 (Mar. 2, 2001)
TN010038 (Mar. 2, 2001)
TN010039 (Mar. 2, 2001)
TN010040 (Mar. 2, 2001)
TN010041 (Mar. 2, 2001)
TN010042 (Mar. 2, 2001)
TN010043 (Mar. 2, 2001)
TN010044 (Mar. 2, 2001)
TN010048 (Mar. 2, 2001)
TN010049 (Mar. 2, 2001)

Volume IV

Illinois
IL010001 (Mar. 2, 2001)
IL010002 (Mar. 2, 2001)
IL010004 (Mar. 2, 2001)
IL010005 (Mar. 2, 2001)
IL010007 (Mar. 2, 2001)
IL010015 (Mar. 2, 2001)
IL010016 (Mar. 2, 2001)
IL010017 (Mar. 2, 2001)
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MI010083 (Mar. 2, 2001)
Minnesota
MN010008 (Mar. 2, 2001)
Ohio
OH010001 (Mar. 2, 2001)
OH010002 (Mar. 2, 2001)
OH010003 (Mar. 2, 2001)
OH010009 (Mar. 2, 2001)
OH100013 (Mar. 2, 2001)
OH010020 (Mar. 2, 2001)
OH010022 (Mar. 2, 2001)
OH010026 (Mar. 2, 2001)
OH010029 (Mar. 2, 2001)

Volume V

Arkansas
AR010001 (Mar. 2, 2001)
AR010008 (Mar. 2, 2001)
AR010027 (Mar. 2, 2001)
Kansas
KS010002 (Mar. 2, 2001)
KS010006 (Mar. 2, 2001)
KS010008 (Mar. 2, 2001)
KS010009 (Mar. 2, 2001)
KS010012 (Mar. 2, 2001)
KS010015 (Mar. 2, 2001)
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KS010022 (Mar. 2, 2001)
KS010023 (Mar. 2, 2001)
KS010025 (Mar. 2, 2001)
KS010026 (Mar. 2, 2001)
KS010029 (Mar. 2, 2001)
KS010069 (Mar. 2, 2001)
KS010070 (Mar. 2, 2001)
Missouri
MO010001 (Mar. 2, 02001)
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MO010003 (Mar. 2, 02001)
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MO010064 (Mar. 2, 02001)
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Oklahoma
OK010013 (Mar. 2, 02001)
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OK010038 (Mar. 2, 02001)
OK010040 (Mar. 2, 02001)
OK010041 (Mar. 2, 02001)
OK010043 (Mar. 2, 02001)
Texas
TX010001 (Mar. 2, 02001)
TX010003 (Mar. 2, 02001)
TX010011 (Mar. 2, 02001)
TX010012 (Mar. 2, 02001)
TX010016 (Mar. 2, 02001)
TX010081 (Mar. 2, 02001)
TX010096 (Mar. 2, 02001)

Volume VI

Alaska
AK010001 (Mar. 2, 02001)
AK010002 (Mar. 2, 02001)
AK010003 (Mar. 2, 2001)
AK010004 (Mar. 2, 2001)
AK010005 (Mar. 2, 2001)
AK010006 (Mar. 2, 2001)
AK010007 (Mar. 2, 2001)
AK010008 (Mar. 2, 2001)
South Dakota
SD010005 (Mar. 2, 2001)
SD010006 (Mar. 2, 2001)
SD010009 (Mar. 2, 2001)
SD010010 (Mar. 2, 2001)

Volume VII

Hawaii
HI010001 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th day of August 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–22356 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that collections of information included in a regulation pertaining to participant directed individual account plans under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) and in ERISA Technical Release 91–1 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA 95). This notice announces the OMB approval numbers and expiration dates.

FOR FURTHER INFORMATION CONTACT: Address requests for copies of the information collection requests (ICRs) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC, 20210. Telephone: (202) 219–4782. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 18, 2001 (66 FR 4865), PWBA announced its intent to request renewal of its current OMB approval for the information collection provisions in a regulation pertaining to participant directed individual account plans under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). In accordance with the PRA 95, OMB has renewed its approval for the ICR under OMB control number 1210–0090. The approval expires December 31, 2002.

In the **Federal Register** of January 18, 2001 (66 FR 4864), the Agency announced its intent to request renewal of its current OMB approval for the information collection provisions of Technical Release 91–1, related to the transfer of excess assets from a defined benefit plan to a retiree health benefits account. In accordance with PRA 95, OMB has renewed its approval for the ICR under OMB control number 1210–0084. The approval expires December 31, 2002.

Under 5 CFR 1320.5 (b), 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.

Dated: August 28, 2001.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 01–22527 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10926, et al.]

Prohibited Transaction Exemption 2001–32; Grant of Individual Exemptions; Development Company Funding Corporation, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Development Company Funding Corporation, Located in the District of Columbia

[Prohibited Transaction Exemption 2001–32; Application No. D–10926]

Exemption

Section I. Transactions

A. Effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Trusts and Certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter of the Certificates and an employee benefit plan when the SBA, the Fiscal Agent, the Selling Agent, the Central Servicing Agent, the Trustee, the Underwriter, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Certificates by a plan in the secondary market for such Certificates; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Certificate on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective August 25, 2000, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter and a plan, when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Certificates is (a) an Obligor with respect to 5 percent or less of the fair market value of the 504 Program Loans underlying the Debentures related to that Series of Certificates, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Certificates in connection with the initial issuance of the Certificates, at least 50 percent of each Series of Certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Series is acquired by persons independent of the Restricted Group.

(iii) A plan's investment in each Series of Certificates does not exceed 25 percent of all of the Certificates of that Series outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Certificates, no more than 25 percent of the assets of a plan with

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR section 2510.3–21(c).

respect to which the person has discretionary authority or renders investment advice are invested in Certificates representing an interest in a Trust containing assets sold or serviced by the same entity.[2] For purposes of this subparagraph (iv) only, an entity will not be considered to service assets contained in a Trust if it is merely a subservicer of that Trust.

(2) The direct or indirect acquisition or disposition of Certificates by a plan described in paragraph B.(1) in the secondary market for such Certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective August 25, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a Trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Trust Agreement; and

(2) The Trust Agreement is provided to, or described in all material respects in the offering circular or other disclosure document provided to the investing plans before they purchase Certificates issued by the Trust.[3]

D. Effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or sanctions would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H), (I) of the Code), solely because of the plan's ownership of Certificates.

Section II. Conditions

The relief provided under Section I is available only if the following conditions are met:

A. The acquisition of Certificates by a plan is on terms (including the Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

B. The rights and interests evidenced by the Certificates are not subordinated to the rights and interests evidenced by other Certificates in the same Series;

C. The Certificates and Debentures are guaranteed as to the timely payment of principal and interest by the SBA, and are therefore backed by the full faith and credit of the United States;

D. The Trustee is not an affiliate of any other member of the Restricted Group.

Section III. Definitions

For purposes of this exemption:

A. ''Certificate'' means a certificate:

(1) That represents a beneficial ownership interest in a discrete pool of Debentures and all payments thereon, held in Trust by the Trustee pursuant to the Trust Agreement;

(2) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the discrete pool of Debentures held as part of such Trust; and

(3) That is issued by the Trustee as agent for the SBA and guaranteed by the SBA as to timely payment of principal and interest pursuant to section 505 of the Small Business Investment Act of 1958, as amended (the Small Business Investment Act).

B. ''Trust'' means the trust created pursuant to the Trust Agreement, under which, with respect to each Series of Certificates, the Trustee holds in Trust for the benefit of the certificateholders of the Series the following property:

(1) The discrete pool of Debentures related to the Series;

(2) A debenture guarantee agreement executed by the SBA pursuant to section 503 of the Small Business Investment Act pursuant to which the SBA guarantees timely payment of principal and interest on the Debentures related to the Series; and

(3) The certificate account maintained by the Central Servicing Agent for such Series into which the Central Servicing Agent deposits payments due in respect of the Debentures on each semiannual debenture payment date.

C. ''Debentures'' means debentures issued by a certified development company and guaranteed as to timely payment of principal and interest by the SBA pursuant to section 503 of the Small Business Investment Act.

D. ''504 Program Loans'' means loans made by a certified development company to a small business concern and funded with the proceeds of a Debenture pursuant to section 503 of the Small Business Investment Act.

E. ''SBA'' refers to the U.S. Small Business Administration.

F. ''Underwriter'' means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);[4] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the Certificates.

G. ''Fiscal Agent'' means the entity that has contracted with the SBA to assess the financial markets, arrange for the production of required documents, and monitor the performance of the Trustee and the Underwriter.

H. ''Selling Agent'' means the entity appointed by a certified development company to select Underwriters, negotiate the terms and conditions of Debenture offerings with the Underwriters, and direct and coordinate Debenture sales.

I. ''Central Servicing Agent'' means the entity that has entered into a master servicing agreement with the SBA to support the orderly flow of funds among borrowers, certified development companies and the SBA.

J. ''Trustee'' means an entity that is the trustee of the Trust.

K. ''Obligor'' means any person that is obligated to make payments under a Section 504 Loan related to a Debenture contained in the Trust.

L. ''Excluded Plan'' means any employee benefit plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Certificates means:

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] The offering circular or other disclosure document must contain substantially the same information that would be disclosed in a prospectus if the offering of the Certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the offering circular or other disclosure document must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[4] For a listing of the Underwriter Exemptions, see the description provided in footnote 1 of Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

(1) Each Underwriter;
(2) The Fiscal Agent;
(3) The Selling Agent;
(4) The Trustee;
(5) The Central Servicing Agent;
(6) Any Obligor with respect to loans relating to Debentures included in the Trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Trust, determined on the date of the initial issuance of Certificates by the Trust;
(7) The SBA; or
(8) Any affiliate of a person described in (1)–(7) above.

N. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;
(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister of such other person; and
(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and
(2) The other person, or an affiliate thereof, is not a fiduciary that has investment management authority or renders investment advice with respect to assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;
(2) The offering circular or other disclosure document is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and
(3) At the time of the delivery, all conditions of this exemption applicable to Sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Certificates) and optional contracts (which give one party the right but not the obligation to deliver Certificates to, or demand delivery of Certificates from, the other party).

S. ''Trust Agreement'' means that trust agreement by and among the SBA, the Fiscal Agent and the Trustee, as amended, establishing the Trust and, with respect to each Series of Certificates, the supplement to the trust agreement pertaining to such Series.

T. ''Series'' means any particular series of Certificates issued pursuant to the Trust Agreement that, in the aggregate, represent the entire beneficial interest in a discrete pool of Debentures held by the Trustee pursuant to the Trust Agreement.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 10, 2001 at 66 FR 36005.

For Further Information Contact: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Merganser Capital Management LP (Merganser), Located in Cambridge, Massachusetts

[Prohibited Transaction Exemption 2001–33 Application No. D–10951]

Exemption

Section I. Transaction

Merganser shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494, Mar. 13, 1984) (PTE 84–14) for the period between April 6, 2000 and December 31, 2006, solely because of its failure to satisfy the shareholders' or partners' equity requirement under section V(a)(4) of PTE 84–14, provided that the conditions set forth in Section II are met.

Section II. Conditions

(a) Merganser shall obtain an irrevocable Letter of Credit, which shall be reduced only by ERISA Claims paid on behalf of ERISA Clients.

(b) The amount available under the Letter of Credit shall be at least $750,000 as of the first day of each fiscal year during which the Letter of Credit is maintained.

(c) Merganser shall cause the Letter of Credit to be issued to an Agent to be held for the benefit of all ERISA Clients.

(d) Merganser shall notify current and future ERISA Clients in writing of: (i) Their status as beneficiaries of the Letter of Credit; (ii) their right to make a draw against the Letter of Credit by presenting the Agent with the documentation described in (g) below; and (iii) the U.S. address of the Agent at which an ERISA Client may present such documentation. Merganser shall promptly notify all ERISA Clients of any changes in the information as to how to contact the Agent.

(e) Merganser shall provide current and future ERISA Clients with a copy of the proposed and final exemption as published in the **Federal Register**.

(f) Merganser shall provide the Agent with a complete list of all ERISA Clients, which shall be updated each time Merganser obtains a new ERISA Client.

(g) The Letter of Credit shall be payable on demand solely to any ERISA Client (or its agent) if the ERISA Client provides the Agent with:

(i)(A) a certified copy of the final judgment against Merganser based on an ERISA Claim of such client, entered by a court of competent jurisdiction with all rights of appeal having expired or having been exhausted, or (B) a true copy of a settlement agreement between the ERISA Client and Merganser providing for damages to the ERISA Client with respect to an ERISA Claim;

(ii) in the case of a final court judgment, a certified true copy of a Sheriff's or Marshall's levy and execution on the judgment, returned unsatisfied, or such other documentation, certified by an officer of the court in which the judgment was entered, stating that the judgment remains unsatisfied following attempts to collect the judgment in accordance with local court rules; and

(iii) a certificate of an authorized representative of the ERISA Client stating the amount of the judgment or settlement which remains unsatisfied.

(h)(i) The Letter of Credit shall be maintained until the earlier of December 31, 2006 or Merganser's satisfaction of the partners' equity requirement under section V(a)(4) of PTE 84–14.

(ii) Notwithstanding subparagraph (i), in the event that one or more ERISA Clients has a Pending ERISA Claim on December 31, 2006, Merganser shall either (A) cause the Letter of Credit to be maintained until the earlier of December 31, 2008 or a final judgment or settlement disposing of all such Pending ERISA Claims, or (B) cause a bond to be purchased which fully insures all such Pending ERISA Claims in the total amount equal to the amount of such Pending ERISA claims but not to exceed $750,000.

Section III. Definitions

(a) ''Agent'' shall mean a commercial bank, trust company or other financial institution subject to federal or state

banking regulation that is independent of Merganser.

(b) ''Claim'' shall mean a civil proceeding for monetary relief which is commenced by the filing or service of a civil complaint or similar pleading, or a request for monetary relief which could have been the subject of such a complaint or pleading but for a settlement agreement.

(c) ''ERISA Claim'' shall mean a Claim filed against Merganser or with respect to which a settlement is reached with Merganser prior to December 31, 2006, by reason of Merganser's alleged breach or violation of a duty described in sections 404 or 406 of the Act.

(d) ''ERISA Client'' shall mean any employee benefit plan covered by Title I of ERISA to which Merganser provides or provided investment management services on or before December 31, 2006.

(e) ''Letter of Credit'' shall mean a standby letter of credit in the amount of $750,000 issued by a commercial bank, trust company or other financial institution subject to federal or state banking regulation that is independent of Merganser.

(f) ''Pending ERISA Claim'' shall mean an ERISA Claim that: (i) has been filed in court and is not the subject of a final judgment or settlement; or (ii) has been the subject of a final judgment or settlement which remains unsatisfied.

(g) A person will be ''independent'' of another person only if:

(i) For purposes of this exemption, such person is not an affiliate of that other person; and

(ii) The other person, or an affiliate thereof, is not a fiduciary that has investment management authority or renders investment advice with respect to assets of such person.

(h) An ''affiliate'' of a person means:

(i) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 2001 at 66 FR 30012.

For Further Information Contact:

Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all materiall terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of September, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–22478 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10946]

Notice of Proposed Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 99–45, Involving Donaldson, Lufkin & Jenrette Securities Corporation (DLJ), Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 99–45.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 99–45 (64 FR 61138, November 9, 1999), an exemption granted to DLJ. PTE 99–45, which is effective as of September 24, 1999, relates to the (1) purchase or sale of a security between certain affiliates of DLJ which are foreign broker-dealers (the Foreign Affiliates) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or the Foreign Affiliates; (2) the extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions that are effected on either an agency or a principal basis, or in connection with the writing of options contracts; and (3) the lending of securities to the Foreign Affiliates by the Plans.

If granted, the proposed exemption would incorporate by reference many of the facts, representations and conditions contained in PTE 99–45. However, the proposed exemption would expand the scope of PTE 99–45 to apply not only to current and future Foreign Affiliates of DLJ that are located in the United Kingdom and Australia, and which are subject to the securities regulatory entities within these jurisdictions, but to current and future Foreign Affiliates of Credit Suisse First Boston Corporation (CSFB), also located in the United Kingdom and Australia. CSFB, a Massachusetts-based broker-dealer registered with the U.S. Securities and Exchange Commission (the SEC), is an indirect, wholly owned subsidiary of Credit Suisse Group (CSG). As of December 31, 1999, CSFB had approximately $97.8 billion in assets on a consolidated basis. CSG is the current parent of DLJ.

Thus, the proposed exemption will affect participants, beneficiaries and fiduciaries of Plans which are engaged in purchases or sales of securities or in securities lending arrangements with Foreign Affiliates of DLJ or CSFB that are located in the United Kingdom and Australia.

EFFECTIVE DATE: If granted, the proposed amendment will be effective as of November 3, 2000.

DATES: Written comments and requests for a public hearing should be received by the Department on or before October 22, 2001.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–10946. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will amend PTE 99–45. PTE 99–45 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of DLJ and CSFB (together, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

PTE 99–45 states that—

- The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any purchase or sale of a security between certain affiliates of DLJ which are Foreign Affiliates and Plans with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or the Foreign Affiliates;
- The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether the transactions are effected on an agency or a principal basis, or in connection with the writing of options contracts; and
- The restrictions of section 406(a)(1)(A) through (D) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to the lending of securities to the Foreign Affiliates by the Plans.

The transactions described in PTE 99–45 are subject to a number of conditions.

Subsequent to the granting of PTE 99–45, the Applicants informed the Department of certain modifications to the Summary of Facts and Representations set forth in Prohibited Transaction Exemption PTE 99–45. Specifically, on August 30, 2000, Credit Suisse Group (CSG), a global financial services company providing insurance, banking and investment banking products in Switzerland and abroad, agreed to purchase Donaldson Lufkin & Jenrette, Inc. (DLJ, Inc.), the former parent of DLJ. Pursuant to a tender offer, Diamond Acquisition Corporation (DAC), a CSG subsidiary and a shell corporation formed for the purpose of the merger described herein, purchased all of the outstanding voting common stock of DLJ, Inc., of the series designated as ''DLJ Common Stock,'' for a purchase price of $90 per share or an aggregate purchase price that was in excess of $10 billion. After these shares of common stock were tendered, the shares of DLJ Common Stock held by AXA, S.A. (AXA), DLJ, Inc.''s ultimate parent at that time, and certain affiliates of AXA, were also purchased by DAC.

On November 3, 2000 (i.e., the closing date), DLJ, Inc. became an indirect, wholly owned subsidiary of CSG and a direct subsidiary of Credit Suisse First Boston, Inc. (CSFBI). Diamond Restructuring Corporation, a wholly owned subsidiary of DAC, merged with and into DLJ, Inc. DLJ, Inc. was the surviving entity in the merger. CSFBI then transferred all of the outstanding shares of its wholly owned subsidiary, CSFB, a U.S. registered broker-dealer, to DLJ, Inc. and CSFB became a wholly owned subsidiary of DLJ, Inc. DLJ continued to exist as a separate wholly owned subsidiary of DLJ, Inc. under the same name. DLJ, Inc. was the surviving entity in the transactions described above and, on November 6, 2000, DLJ, Inc. was renamed ''Credit Suisse First Boston (USA), Inc.'' (CSFB (USA)). At present, DLJ continues to survive as a wholly owned subsidiary of CSFB (USA).

The Applicants note that PTE 99–45 defines the term ''Foreign Affiliates'' to include ''current and future affiliate[s] of DLJ'' that are subject to similar regulations in the United Kingdom and in Australia. Therefore, the Applicants believe that foreign broker-dealer affiliates of CSFB, by virtue of the acquisition transaction, are affiliates of DLJ and, thus, are covered by PTE 99–45, to the extent the Foreign Affiliates are regulated by either the Securities and Futures Authority in the United Kingdom or the Australian Securities & Investments Commission in Australia. In addition, the Applicants note that DLJ, as an independent entity, will survive for some time, but may eventually be merged into and become part of CSFB in the future.

If granted, the amendment will be effective as of November 3, 2000. For purposes of the amendment, the Department has revised the operative language of the proposal and the definitions to include references to both DLJ and CSFB and their affiliates, where applicable. The Department notes that these revisions will extend the availability of PTE 99–45 to current and future Foreign Affiliates of DLJ that are based in the United Kingdom and Australia as well as to current and future Foreign Affiliates of CSFB, also based in these countries.

Notice to Interested Persons

The Applicants represent that, because those Plans that will be potentially interested in the transactions cannot be identified at this time, the only practical means of notifying Plan fiduciaries is by the publication of the notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the date of the

publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 99–45 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to any purchase or sale of a security between certain affiliates of Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) or Credit Suisse First Boston Corporation (CSFB) which are foreign broker-dealers (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ, CSFB, or a Foreign Affiliate, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to any Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery or by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day on which the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)[1] had it remained the record owner of such securities.

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded.[2]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (9), the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II. General Conditions

A. The Foreign Affiliate is a registered broker-dealer subject to regulation by a governmental agency, as described in Section III. B., and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements.

C. Prior to the transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of this exemption have been met except that—

[1] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

[2] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by paragraph E.; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period;

E. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to above in paragraph D., unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan.

However, none of the persons described above in paragraphs (2)–(5) of this paragraph E. shall be authorized to examine trade secrets of the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

F. Prior to any Plan's approval of any transaction with a Foreign Affiliate, the Plan is provided copies of the proposed and final exemption with respect to the exemptive relief granted herein.

Section III. Definitions

For purposes of this proposed exemption,

A. The terms ''DLJ'' or ''CSFB'' as referred to in Section I., mean Donaldson, Lufkin & Jenrette Securities Corporation or Credit Suisse First Boston Corporation.

B. The term ''affiliate'' of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

C. The term ''Foreign Affiliate,'' shall mean a current or future affiliate of DLJ or CSFB that is subject to regulation as a broker-dealer by—

(1) The Securities and Futures Authority, in the United Kingdom; or

(2) The Australian Securities & Investments Commission in Australia.

D. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Section IV. Effective Date

If granted, this proposed exemption will be effective as of November 3, 2000.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 99–45, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 4th day of September, 2001.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–22479 Filed 9–6–01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10762, et al.]

Proposed Exemptions; Key Trust Company of Ohio (Key Trust) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR

32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Key Trust Company of Ohio (Key Trust), Located in Cleveland, OH

[Application No. D–10762]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the making of interest-free loans to a defined contribution plan (the Plan) by its respective sponsor (the Plan Sponsor) pursuant to the terms of a credit facility arrangement (the Credit Facility Arrangement), established by Key Trust and its affiliates (collectively, KeyBank), which enables daily transactions, such as participant investment transfers, distributions or participant loans, in connection with the Plan's unitized employer stock fund (the Unitized Employer Stock Fund or Fund) within KeyBank; and (2) the repayment, by the Plan to the Plan Sponsor, of any interest-free loan within 90 days with cash proceeds received from the sale of employer stock (Employer Stock) held in the Unitized Employer Stock Fund.

II. General Conditions

(a) Each loan made under the Credit Facility Arrangement provides short-term funds to the Plan for a period of no longer than 90 days for the purpose of facilitating Plan participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(b) The maximum amount of short-term funds available to a Plan under the Credit Facility Arrangement, in the aggregate, does not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.

(c) Each loan made under the Credit Facility Arrangement is repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

(d) For purposes of repaying a loan under the Credit Facility Arrangement, the sales price for the Employer Stock is based upon its fair market value as determined on the New York Stock Exchange (the NYSE) or other applicable securities exchange where such Employer Stock is primarily traded on the date of the transaction, as calculated by an independent pricing service.

(e) Each loan made under the Credit Facility Arrangement is unsecured and no commitment fees, interest or commissions are paid by the Plan.

(f) In the event of a loan default or delinquency, the Plan Sponsor has no recourse against the Plan.

(g) Each loan is initiated, accounted for and administered by KeyBank, the independent fiduciary, which will monitor the terms and conditions of the exemption on behalf of the Plan, at all times.

(h) KeyBank maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of KeyBank, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than KeyBank, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i)(1) Except as provided in paragraph (h)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (i)(1)(B) or (C) shall be authorized to examine the trade secrets of KeyBank or commercial or financial information which is privileged or confidential.

III. Definitions

(a) The term ''KeyBank'' refers Key Trust Company of Ohio and its affiliates.

(b) An ''affiliate'' of KeyBank includes—

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with KeyBank;

(2) Any officer, director, employee, relative or partner in KeyBank; and

(3) Any corporation or partnership of which KeyBank is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''closing price'' means the final price at which Employer Stock has traded on the NYSE (or such other exchange on which Employer Stock is primarily traded) on the date of the transaction as may be reported to KeyBank using an independent pricing service for the reporting of final prices.

(e) The term ''Employer Stock'' refers to common stock issued by a Plan Sponsor, an affiliate of the Plan Sponsor, a former Plan Sponsor, or an affiliate of the former Plan Sponsor.[2]

(f) The term ''Plan Sponsor'' refers to an employer (or an affiliate of the employer) sponsoring a defined contribution plan which has entered into a Unitized Employer Stock Fund Investment Policy Agreement (the Policy Agreement) with KeyBank in order to structure the investment by the Plan's Unitized Employer Stock Fund in Employer Stock.

(g) The term ''Unitized Employer Stock Fund'' refers to an investment fund established by KeyBank whose assets will consist primarily of shares of Employer Stock.

(h) The ''trading day'' refers to any day on which KeyBank and the NYSE

[1] Unless otherwise noted, references to specific sections of the Act refer also to the corresponding provisions of the Code.

[2] The Department notes that the term ''Employer Stock,'' as defined in this proposal, may not satisfy the definition of ''employer security'' contained in section 407(d)(1) of the Act.

are open for business and are able to transact trades involving Employer Stock as a Plan investment. The close of trading day will be the time of the close on the NYSE. In the event that either KeyBank or the NYSE (or any other exchange on which the Employer Stock is primarily traded) is incapable of processing trades involving Employer Stock, or in the event trading in Employer Stock is suspended, the close of the trading day will be the last time by which transactions involving Employer Stock are processed on any such day.

(i) The term ''drift allowance'' refers to the range of percentages, comprised of a maximum and minimum percentage, which is determined and established by the Plan Sponsor as being the proper percentages within which the liquidity component of the Unitized Employer Stock Fund should represent of the entire market value of such Fund on any given day.

(j) The term ''liquidity component'' means the short-term investment vehicle which is selected by the Plan Sponsor and used to invest any uninvested cash in the Plan's Unitized Employer Stock Fund.

(k) The term ''target percentage'' means the number, expressed as a percentage, which is determined and established by the Plan Sponsor, as being the proper percentage that the liquidity component of the Unitized Employer Stock Fund will represent of the entire market value of such Fund (including the liquidity component and the Employer Stock). The target percentage will take into consideration factors such as the daily market volume for trading in the Employer Stock and the average daily trading activity of such stock in the Unitized Employer Stock Fund.

(l) The term ''transaction valuation date'' refers to any day on which KeyBank and the NYSE (or any other national securities exchange on which Employer Stock is primarily traded) are open for business and are able to transact trades.

Summary of Facts and Representations

1. *KeyBank,* which serves as trustee, custodian and/or recordkeeper to employee benefit plans, includes Key Trust and its affiliates. KeyBank maintains its principal place of business at 127 Public Square, Cleveland, Ohio. Currently, KeyBank has tax-exempt assets under management in excess of $53.6 billion and is trustee for more than $14.5 billion in defined contribution plan assets.

KeyBank has been providing services to defined contribution plans for more than 40 years. In this regard, KeyBank maintains records for approximately 1,120 daily valued plans. KeyBank also serves as trustee to 61 defined contribution plans which permit participant-directed investments. As of December 31, 2000, these Plans had approximately 135,000 participants and beneficiaries. Although the fair market value of each Plan's assets varies in amount, as of December 31, 2000, the aggregate fair market value of Plan assets that were invested in Unitized Employer Stock Funds under management by KeyBank was $1.76 billion. Further, KeyBank has experience in maintaining Unitized Employer Stock Funds similar to those described herein.

As discussed in Representation 15 of this proposed exemption, KeyBank has agreed to serve as the independent fiduciary for existing and future client Plans wishing to participate in the Credit Facility Arrangement described herein. KeyBank represents that it is (or will be) independent of each Plan Sponsor and the fees that it receives from a Plan or a Plan Sponsor for fiduciary, custodial or recordkeeping services constitute (or will constitute) less than one percent of its total fiduciary funds and fund management revenues. Further, KeyBank represents that it will not receive any additional fees from a Plan as a result of its oversight of a Credit Facility Arrangement.

2. *Key Trust* is a trust company also headquartered at 127 Public Square, Cleveland, Ohio. Key Trust and its affiliates, which are collectively referred to herein as ''KeyBank,'' are subsidiaries of KeyCorp, a bank holding company.

3. *The Plans* that will engage in the subject Credit Facility Arrangement will consist of defined contribution plans for which KeyBank currently (or in the future) serves as trustee, custodian and/or recordkeeper. Each Plan will permit participant-directed investment of account balances among various investment funds, including a Unitized Employer Stock Fund. Thus, each Plan will be an ''individual account plan'' or a ''defined contribution plan'' within the meaning of section 3(34) of the Act and will be subject to the provisions of Titles I and II of the Act. Further, each Plan will be qualified under section 401(a) of the Code and may have a cash or a deferred compensation arrangement, as provided under section 401(k) of the Code. Although a Plan is required to permit participant investment direction of account balances, such Plan will not necessarily be subject to the provisions of section 404(c) of the Act.

4. Each Unitized Employer Stock Fund [3] established for a Plan will be invested primarily in stock issued by a Plan's sponsor, an affiliate of the Plan sponsor, a former Plan Sponsor, or an affiliate of a former Plan Sponsor (collectively, the Plan Sponsor). A portion of the Fund may be invested in cash or cash equivalents. (Alternatively, the Unitized Employer Stock Fund may be funded solely with Employer Stock.) The actual percentage of a Unitized Employer Stock Fund that is invested in cash or cash equivalents will be determined by the Plan Sponsor based on the liquidity needs of the Fund.[4]

If it is determined that the Unitized Employer Stock Fund is to operate in a daily environment, sufficient liquidity must be created so that participant requests may be settled on the day on which they are requested. In other words, the Plan Sponsor must determine both a ''target percentage'' and a ''drift allowance'' for the ''liquidity component.'' [5] Then, funds consisting of cash and cash equivalents, which have been allocated to the liquidity component, will be placed in a money market fund selected by the Plan Sponsor.[6] In making his or her determinations, the Plan Sponsor will consider such factors as (a) the last six months of trading activity for the Employer Stock, (b) the total number of

[3] For a simplified example showing how the Unitized Employer Stock Fund will operate, see the Appendix.

[4] Sufficient liquidity is defined as having enough cash on hand so that net daily activity may be transacted at the net asset value (NAV) of the day the transactions are requested.

[5] Section III(i)-(k) of this proposed exemption defines the terms ''drift allowance,'' ''target percentage,'' and ''liquidity component'' as follows:

(i) The term ''drift allowance'' refers to the range of percentages, comprised of a maximum and minimum percentage, which is determined and established by the Plan Sponsor as being the proper percentages within which the liquidity component of the Unitized Employer Stock Fund should represent of the entire market value of such Fund on any given day.

(j) The term ''liquidity component'' means the short-term investment vehicle which is selected by the Plan Sponsor and used to invest any uninvested cash in the Plan's Unitized Employer Stock Fund.

(k) The term ''target percentage'' means the number, expressed as a percentage, which is determined and established by the Plan Sponsor, as being the proper percentage that the liquidity component of the Unitized Employer Stock Fund will represent of the entire market value of such Fund (including the liquidity component and the Employer Stock).

[6] According to KeyBank, the Plan Sponsor generally will select a KeyBank money market fund. Any interest earned on assets invested in such fund will be used for the benefit of those participants who have invested in a Plan's Unitized Employer Stock Fund. Although a KeyBank money market fund will not charge a Plan any fees in connection with the cash assets invested, KeyBank will receive an account-level fee as part of its overall trustee compensation.

shares in the Unitized Employer Stock Fund versus the total number of shares held in the market, and (c) past and anticipated daily transaction volumes.

5. A participant's interest in a Unitized Employer Stock Fund will consist of ''units.'' The underlying Employer Stock of a Plan Sponsor that is held on behalf of a Plan in the Unitized Employer Stock Fund will constitute a security for which there is a ''generally-recognized market'' within the meaning of section 3(18) of the Act. However, the Employer Stock may be thinly-traded or considered appropriate to sell in the market over a period of time.

6. KeyBank and the Plan Sponsor will enter into an individually-customized, Policy Agreement in order to structure a Unitized Employer Stock Fund's investment in Employer Stock. The Policy Agreement will be developed in a manner which is consistent with the Plan, participant self-direction, applicable provisions of the Act, and the Department's regulations. In particular, the Policy Agreement will establish certain administrative procedures that KeyBank will utilize in order to effect Plan transactions involving a Unitized Employer Stock Fund, including purchases or sales of Employer Stock held by such Fund. For example, a Plan may provide that participants may sell (or purchase) units of the Unitized Employer Stock Fund on a daily basis and buy (or sell) units or shares of another investment fund under the Plan, with the sales and purchases settling on a daily basis. In addition, a Plan may provide that participants may sell units of the Unitized Employer Stock Fund to receive participant distributions and loans. Further, the Policy Agreement will define the target and drift allowance comprising the liquidity component and include any rebalancing parameters that may be applicable.

7. The Policy Agreement will also describe how KeyBank, as Plan trustee, will process participant transactions. In this regard, the Policy Agreement will set forth a cash position which the Plan Sponsor believes will provide sufficient liquidity in the Unitized Employer Stock Fund. This will enable KeyBank to effect participant transactions on a daily basis. When a Plan participant sells units of a Unitized Employer Stock Fund, the value of the units will be made available to the participant on a specified transaction date. If the cash or cash equivalents of the Unitized Employer Stock Fund are not sufficient, after netting out participant purchases and sales with respect to the Unitized Employer Stock Fund on the transaction date, Employer Stock held in the Fund may be sold by KeyBank over a period of time in order to complete the participant's transaction and to minimize, as much a possible, a depressed price for Employer Stock.[7]

In other words, if the percentage of the liquidity component falls within the drift allowance specified in the Policy Agreement, KeyBank will do nothing more. However, if the percentage rises above the maximum drift allowance, KeyBank will purchase sufficient Employer Stock in order to bring the liquidity component back into target. Conversely, if the percentage of the liquidity component falls below the minimum drift, KeyBank will sell Employer Stock sufficient to bring the liquidity component back into target.

On most days, however, KeyBank notes that net participant activity will not result in the liquidity component drifting above or below the allowance range. As such, KeyBank will not have to go into the open market each day to purchase or sell shares of Employer Stock.

8. On occasion, KeyBank represents that net participant activity may exceed the balance of the liquidity component. If this happens, an overdraft will occur in the Plan's Unitized Employer Stock Fund. Under such circumstances, KeyBank states that it has several alternatives it can pursue. For example, KeyBank may immediately—

- Sell shares of Employer Stock sufficient in amount to cover the overdraft and bring the liquidity component back to its target. Such trades will ordinarily be transacted on a next business day settlement period.
- Sell shares of Employer Stock sufficient in amount to cover the overdraft as well as bring the liquidity component back within the drift allowance.
- Request that the Plan Sponsor buy back sufficient shares of Employer Stock to cover the overdraft as well as bring the liquidity component back within the drift allowance for next day settlement. In order to do so, KeyBank represents that the Plan Sponsor must (i) be permitted to buy back shares of Employer Stock, (ii) be interested in building its treasury position, (iii) have sufficient cash to do so, (iv) pay a fair market price for the shares, and (v) not apply any transaction costs. The overdraft will then be reflected on the Plan's records for at least one business day.
- Borrow money from an independent lender and charge the cost of the temporary loan to the Plan's Unitized Employer Stock Fund. Under this alternative, KeyBank states that once shares of Employer Stock sufficient to cover the overdraft are sold and the liquidity component is brought back to its target position, it will pay back the third party lender for the amount of the loan as well as the loan fee. Under this alternative, a loan agreement will be required which will include parameters dictating whether KeyBank will be required to sell shares of Employer Stock on a next day basis or within the standard settlement time frame.

9. Assuming it must effect sales of Employer Stock in order to fund participant requests in the event of an overdraft situation, KeyBank proposes to adopt an interim solution. Under KeyBank's proposal, a Plan Sponsor would be permitted to make periodic, short-term, interest-free loans to its respective Plan under a Credit Facility Arrangement established by KeyBank. The Credit Facility Arrangement, whose terms will be embodied in the Policy Agreement, will be offered by KeyBank as a service to help the Plan Sponsor address the liquidity needs of the Plan's Unitized Employer Stock Fund in a daily trading environment. The Credit Facility Arrangement will facilitate participant transfers (*e.g.,* the transfer of all or part of a participant's interest from the Unitized Employer Stock Fund to another investment fund, or individual shares of stock if permitted by the Plan), distributions, loans, and other participant transactions within the Unitized Employer Stock Fund.

In other words, the Credit Facility Arrangement is directed at net participant activity (*i.e.,* the liquidity needs of the Unitized Employer Stock Fund as a whole rather than individual participant activity). The Credit Facility Arrangement will allow a Plan to—

- Obtain short-term funds from the Plan Sponsor in order to implement participant directions with respect to daily transactions involving the Unitized Employer Stock Fund, as of a specified transaction valuation date (see Representation 10).
- Effect sales of Employer Stock held in the Unitized Employer Stock Fund in

[7] To the extent that Employer Stock is sold to the Plan Sponsor or an affiliate of an existing Plan Sponsor, KeyBank represents that such sale will be conducted in accordance with section 408(e) of the Act and the regulations promulgated thereunder. However, the Department expresses no opinion herein on whether the sale of Employer Stock to the Plan Sponsor or to an affiliate of an existing Plan Sponsor will satisfy the terms and conditions of section 408(e) of the Act.

In addition, the Department notes that the timing of such sales will be subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, section 404 of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of the plan.

an orderly fashion. Without the Credit Facility Arrangement, the KeyBank might be required to sell a large block of Employer Stock held in the Plan's Unitized Employer Stock Fund on a specified date at a depressed price.

• Repay amounts borrowed from the Plan Sponsor with proceeds received from the sale of Employer Stock.

By participating in the Credit Facility Arrangement, a Plan will not be subject to restrictions that will impact on the transferability of units in the Unitized Employer Stock Fund or curtail daily trading by participants. Also, by participating in the Credit Facility Arrangement, the Plan will not have to obtain credit from an unrelated, third party and pay a loan fee to such lender. Accordingly, KeyBank requests an administrative exemption from the Department with respect to the implementation of such arrangement.

10. As noted in Representation 9, the proposed Credit Facility Arrangement will facilitate daily trading of the Unitized Employer Stock Fund by providing required liquidity. This will enable a Plan's Unitized Employer Stock Fund to execute participant transactions at the fair market value of the Fund units. The valuation will be based on a specified transaction valuation date that has been established under the Plan and the Policy Agreement.

Typically, the transaction valuation date for a Plan with daily trading will be any day on which KeyBank and the NYSE (or any other national securities exchange on which Employer Stock is primarily traded) are open for business and are able to transact trades. The value of units in a Unitized Employer Stock Fund (including the value of Employer Stock, cash or cash equivalents and accrued, but not payable, dividends or earnings) will be based on the closing price of the Employer Stock for the trading day coinciding with, or immediately proceeding the transaction valuation date. The closing price will be the final price at which the Employer Stock has been traded on the NYSE (or other applicable exchange on which Employer Stock is primarily traded). KeyBank will determine a per unit value (*i.e.,* the NAV) by dividing the total value of the Unitized Employer Stock Fund by the total number of units held by Plan participants. KeyBank will make appropriate adjustments for accruals and expenses of the Unitized Employer Stock Fund.

11. Generally, participant transactions that are initiated by KeyBank on a given day (*i.e.,* prior to 4:00 p.m.) will be processed after the close of market at the day's NAV for the Unitized Employer Stock Fund. Should a KeyBank representative become aware of an overdraft problem at the beginning of the next business day, the representative will determine if the overdraft situation is within the parameters of the Policy Agreement. The KeyBank representative will then inform the Plan Sponsor of the overdraft and the Plan Sponsor will make an interest-free loan to the Plan under the Credit Facility Arrangement in order to provide the necessary liquidity to the Plan's Unitized Employer Stock Fund. The loan amount will be determined by KeyBank and such loan will be made by the Plan Sponsor to the Plan through wire transfer or account debit authorization.

12. For purposes of effecting sales of Employer Stock, KeyBank will use unaffiliated brokers unless the Plan Sponsor specifically requires the use of a KeyBank affiliated broker. If an affiliated broker is utilized, KeyBank represents that it will comply with the terms and conditions of Prohibited Transaction Class Exemption (PTCE) 86–128, 51 FR 41686 (November 18, 1986).[8]

Thus, in most cases, KeyBank expects that it will sell Employer Stock on a three day settlement basis and on the same day as the loan is made to the Plan. However, in some cases, an orderly liquidation of the Employer Stock may need to occur over a longer period of time.

Generally, the amount of Employer Stock sold by KeyBank at one time will not be more than 25–30 percent of the daily trading activity in the Employer Stock.[9] However, in rare cases,[10] an orderly liquidation of the Employer Stock may need to occur over a period of weeks or a few months depending upon the size of the block of Employer Stock and the trading volume of such stock. It is expected that a KeyBank broker will obtain the best execution and price for the sale of the Employer Stock within a given time frame as well as within the Plan's requirements.

As noted above, the price at which the Employer Stock will be sold by KeyBank will be determined on a transactional basis.[11] Any Employer

[8] In pertinent part, PTCE 86–128 permits a plan fiduciary to effect or execute securities transactions on behalf of a plan in return for a fee, provided that certain enumerated conditions are met. The Department is, however, providing no opinion on whether such transactions satisfy the terms and conditions of PTCE 86–128.

[9] This percentage parameter also applies to KeyBank's purchases of Employer Stock for a Plan. KeyBank has adopted an internal policy to the effect that purchases of Employer Stock will be made in accordance with Rule 10b–18 (Rule 10b–18) of the Securities and Exchange Act of 1934 (the 1934 Act). Rule 10b–18 serves as a ''safe harbor'' for an issuer or affiliated purchaser to purchase shares of the issuer without violating the anti-manipulation (e.g., market-making) provisions of sections 9(a)(2) or 10(b) of the 1934 Act. In general, purchases are made in accordance with Rule 10b–18 if each of the following conditions is met: (a) the volume of purchases, other than block purchases, on any given day does not exceed 25 percent of the trading volume of the security; (b) the purchase price may not be more than (i) for listed stocks, the higher of the current independent bid quotation or the last independent sale price on the exchange, and (ii) for stocks traded over the counter, the lowest current independent offer quotation; (c) the purchases may not be the opening transaction on the market or occur during the last half hour of the schedules close of trading on the market; and (d) the purchases are made from or through one broker on a single day, unless the purchase was not solicited on behalf of the issuer or affiliated purchaser.

The percentage parameter for purchases or sales of Employer Stock by KeyBank may be exceeded through an exception to Rule 10b-18 volume limitation. In this regard, Rule 10b-18 does not count block purchases (i.e., a quantity of stock that either has a purchase price of $200,000 or more or is at least 5,000 shares and has a purchase price of at least $50,000) toward the volume limitation. Normally, however, KeyBank will not exceed the percentage parameters because its policy is not to open the market or move the market when it trades Employer Stock.

[10] The liquidity needs of the Unitized Employer Stock Fund and the market for Employer Stock will necessitate the situation in which an orderly liquidation of Employer Stock may need to occur over a period of months or a few weeks. For example, (a) if it is known that a 10 percent shareholder is liquidating his or her interest in the Plan Sponsor in the market, large sales of Employer Stock will typically yield a lower price than smaller sales over a period of weeks or a few months; (b) if a large amount of Employer Stock is to be sold by the Plan (e.g., part of the business is sold and a large number of employees become eligible for and elect to receive distributions from the Plan), an orderly sale of Employer Stock by the Plan would normally yield a higher price; or (c) if the Plan Sponsor determines that it would be imprudent or unlawful to sell the Employer Stock at a particular time (e.g., it jeopardizes the Plan's qualified tax status or it would violate a securities law), then sales of Employer Stock would be made as prudent and lawful as possible and would be extended over a period of time.

[11] In contrast, participant transactions involving the Unitized Employer Stock Fund, which are

Stock sold on the open market by KeyBank will be at the market price. Occasionally, KeyBank may sell the Employer Stock in a private sale. The price will still be determined on a transactional basis and will reflect such stock's current fair market value.

13. The proposed exemption will be subject to a number of structural safeguards. First, each loan made under the Credit Facility Arrangement will provide short-term funds to the Plan for a period of no longer than 90 days, and the purpose of each loan will be to facilitate participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund. Second, to provide liquidity to facilitate daily transactions with a Plan's Unitized Employer Stock Fund, the maximum amount of short-term funds available to the Plan under the Credit Facility Arrangement, in the aggregate, will not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.[12] Third, each loan made under the Credit Facility Arrangement will be repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund. Fourth, each loan made under the Credit Facility Arrangement will be unsecured and no commitment fees, interest or commissions will be paid by the Plan. Fifth, in the event of a loan default or delinquency, the Plan Sponsor will have no recourse against the Plan. Sixth, as described in Representation 15, each loan will be initiated, accounted for and administered by KeyBank, as the independent fiduciary, which will maintain written records of each Credit Facility Arrangement and monitor, on behalf of the affected Plan, the terms and conditions of the exemption, at all times.

14. Absent the requested exemption, KeyBank is concerned that loans to the Plan from the Plan Sponsor and the repayment of such loans will constitute prohibited transactions under sections 406(a) and 406(b) of the Act, as such provisions relate to extensions of credit by a party in interest to a plan, the transfer of assets between a plan and a party in interest, and self-dealing by a plan fiduciary. In addition, KeyBank represents that short-term extensions of credit to facilitate securities transactions are covered under PTCE 80–26 (45 FR 28545, April 29, 1980).[13] However, KeyBank notes that PTCE 80–26 would cover loans entered into under the Credit Facility Arrangement only if the loan proceeds are used to pay benefits or if the loans are limited in duration to three business days. Therefore, KeyBank states that an individual exemption is needed to facilitate participant transfers and loans with a Unitized Employer Stock Fund under the Credit Facility Arrangement. This will allow loan periods to exceed three business days and permit the sale of Employer Stock in an orderly fashion.

15. As the independent fiduciary, KeyBank believes the Credit Facility Arrangement will be in the best interests of a Plan and its participants and beneficiaries. With the Credit Facility Arrangement, KeyBank represents that the Plan will be able to obtain, without payment of interest or costs associated under a similar arrangement with an unrelated party, short-term funds from the Plan Sponsor which will enable participants to make daily transactions to and from the Unitized Employer Stock Fund as of the transaction valuation date. In forming its opinion, KeyBank will consider the Plan's overall investment portfolio, liquidity requirements and investment objectives and policies. KeyBank will determine whether the Credit Facility Arrangement is consistent with and furthers each of these aspects of a Plan.

KeyBank agrees to monitor the Credit Facility Arrangement throughout its duration on behalf of the Plan and take any appropriate actions to safeguard the interests of the Plan. In this regard, KeyBank will be given the authority to monitor, at all times, the Credit Facility Arrangement as part of its arrangements with the Plan Sponsor under the Policy Agreement regarding the structure of the Unitized Employer Stock Fund. In this regard, KeyBank will—

- Monitor the amount of cash contained in the Unitized Employer Stock Fund and provide the Plan Sponsor with information regarding this matter. In turn, the Plan Sponsor will determine the amount of cash necessary to provide sufficient liquidity for KeyBank to process Plan transactions.
- Review and report the proportion of cash to Employer Stock held within the Unitized Employer Stock Fund at the completion of each transaction involving such Fund.
- Sell sufficient shares of Employer Stock as are necessary to bring the cash portion of the Fund within the target percentage.
- Consent to a modification of the cash position of the Unitized Employer Stock Fund if KeyBank and the Plan Sponsor determine that such revised position is appropriate based on overall Plan activity and KeyBank's standard operating procedures.
- Have sole responsibility (i) with respect to the unaffiliated broker and the primary exchange through which the purchase and sale of Employer Stock will occur; and (ii) whether to execute the transaction as one or a series of more than one trade.
- Use best efforts to effectuate trades involving Employer Stock in an efficient manner which is consistent with its obligations under the Act.

In addition, KeyBank will provide each Plan fiduciary with an Independent Fiduciary Statement reflecting KeyBank's determinations prior to permitting the Credit Facility Arrangement to become effective. Unless a particular application of the Credit Facility Arrangement to an overdraft situation does not meet the standards set forth in the Policy Agreement, the interest-free loan will be processed in accordance with the Policy Agreement.

KeyBank represents that its ongoing independent involvement in, and oversight of, the Credit Facility Arrangement program will also provide protection for the Plan and its participants and beneficiaries. Consistent with the relevant Plan provisions, KeyBank will be solely responsible for determining when and how much to borrow under the Credit Facility Arrangement as established by the Plan Sponsor pursuant to the Policy Agreement between KeyBank and Plan Sponsor, and to cause the Plan to repay loan amounts within the 90 day period. As stated above, KeyBank will receive no additional fee or other compensation as a result of the Credit Facility Arrangement.

16. KeyBank represents that the proposed transactions will satisfy the statutory conditions for an exemption under section 408(a) of the Act because:

(a) The Credit Facility Arrangement will enhance a Plan Sponsor's ability to provide Plan participants with a Unitized Employer Stock Fund featuring daily transactions and valuations, thereby affording participants the

described above in Representations 10 and 11 of this proposed exemption, will be made after the close of market based on the unit value of the Unitized Employer Stock Fund at the closing price of the Employer Stock held by the Unitized Employer Stock Fund. Participants will also receive confirmation of the unit price at which their transactions (*e.g.,* distributions, transfers, etc.) are made.

[12] KeyBank notes that the percentage parameter for purchases and sales of Employer Stock has no correlation to the referenced condition.

[13] PTCE 80–26 permits parties in interest to make interest-free loans to an employee benefit plan (a) to facilitate the payment of ordinary operating expenses of the plan, including the payments of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract or (b) for a period of not more than three days, for a purpose incidental to the ordinary operation of the plan.

flexibility of moving into or out of the Fund on a daily basis, with the fair market value of Fund units established as of an established transaction valuation date.

(b) The Credit Facility Arrangement will allow the Plan Sponsor to make short-term funds available to a Plan in order to facilitate Plan participant transactions with the Unitized Employer Stock Fund.

(c) The Credit Facility Arrangement will permit the orderly sale of Employer Stock thereby enhancing the Unitized Employer Stock Fund's asset value for all Plan participants and permitting a better return to the Fund than could be achieved if sales were to be made as of a given trading day to complete participant transactions.

(d) Each loan made under the Credit Facility Arrangement will provide short-term funds to the Plan for a period of no longer than 90 days and the purpose of each loan will be to facilitate participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(e) The maximum amount of short-term funds available to the Plan under the Credit Facility Arrangement will, in the aggregate, not exceed 25 percent of the Plan's Unitized Employer Stock Fund.

(f) Each loan made under the Credit Facility Arrangement will be repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

(g) For purposes of repaying loans under the Credit Facility Arrangement, the sales price for the Employer Stock will be based upon its fair market value as determined on the NYSE or other applicable securities exchange on which Employer Stock is primarily traded, as of the date of the transaction.

(h) Each loan made under the Credit Facility Arrangement will be unsecured and no commitment fees, interest, commissions will be paid by the Plan.

(i) In the event of a loan default or delinquency, the Plan Sponsor will have no recourse against the Plan.

(j) Each loan will be initiated, accounted for and administered by KeyBank, the independent fiduciary, which will maintain written records of each Credit Facility Arrangement and monitor the terms and conditions of the exemption, on behalf of the affected Plan, at all times.

Notice to Interested Persons

Notice of the proposed exemption will be provided by first-class mail to each known Plan Sponsor within 30 days after the publication of the notice of proposed exemption in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 60 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Appendix

Following is a simplified example illustrating the drift allowance, the target position and the liquidity component.

Suppose that the initial funding of the ABC Company Stock Option (Day One) is a cash and an in-kind contribution of $10 million.

At the establishment of the option, the Plan Sponsor, following discussions with KeyBank, sets the liquidity component at 1 percent and the drift allowance at 0.2 percent.

As such, the in-kind portion of the $10 million contribution is $9.9 million. $100,000 of the contribution will be made in cash and will be kept ''liquid.'' The $100,000 amount will be invested in a short-term investment fund with KeyBank. Assuming shares of Employer Stock cost $9 per share (closing price on Day One), the in-kind contribution will be 1.1 million shares.

The Unitized Employer Stock Fund's balance sheet will be created. In addition, an initial unit value will be determined. For these purposes, KeyBank has assumed a $10 unit value to start, which may bear no direct relationship to the actual value of the Employer Stock. Thus:

	MV	Units	Unit value
Initial Balance (at close Day One)	$10,000,000	1,000,000	$10.00

On Day One, net participant activity received prior to the cut-off time (i.e., 4:00 p.m.) including contributions, distributions and transfers is acted upon and totaled after the close of the market on Day One. Then, prior to the market opening on the next business day (Day Two) such amount is either added or subtracted from the balance of the Unitized Employer Stock Fund.

This may be illustrated as follows:

	MV	Units	Unit value
Opening Balance	$10,000,000	1,000,000	$10.00
E/ee Contributions	5,000	500	10.00
E/er Contributions	10,000	1,000	10.00
Transfers In	7,000	700	10.00
Distributions	(8,000)	(800)	10.00
Loans	(3,000)	(300)	10.00
Transfers Out	(12,000)	(1,200)	10.00
(Sub-Total)	9,999,000	999,000	10.00

Total Net Participant Activity = ($1,000) (i.e., $5,000 + 10,000 + 7,000 − [8,000 + 3,000 + 12,000]

KeyBank next determines the new balance in the liquidity component by posting the net activity against it. In this example,

$100,000 (representing the cash portion of the in-kind contribution)—$1,000 (representing net participant activity) = $99,000.

Prior to market opening on the next business day (Day Two), the liquidity component is $99,000/$9,999,000 or 0.0099009. Since the liquidity component is within the 1 percent target, KeyBank does not need to do anything on Day Two.

At the close of market on Day Two, KeyBank will determine the value of the Unitized Employer Stock Fund (both in

terms of dollars and unit value) by pricing the shares of the Employer Stock, adding the value of the liquidity component, adding any actual or accrued earnings, and subtracting actual expenses occurring on Day Two. Thus, using the following assumptions,

The 1.1 million shares, priced at $9.25 (the new closing price for the Employer Stock) =	$10,175,000
The liquidity component =	99,000
Earnings =	5,000
Expenses (occurring on Day Two) =	(15,000)
	$10,264,000

	MV	Units	Unit value
Opening Balance	$10,000,000	1,000,000	$10.00
E/ee Contributions	5,000	500	10.00
E/er Contributions	10,000	1,000	10.00
Transfers In	7,000	700	10.00
Distributions	(8,000)	(800)	10.00
Loans	(3,000)	(300)	10.00
Transfers Out	(12,000)	(1,200)	10.00
(Sub-Total)	9,999,000	999,900	10.00
Earnings	5,000		
Expenses	(15,000)		
Unrealized Apprec	275,000		
Closing Balance	$10,264,000	999,900	10.2650

Net participant activity received prior to cut-off time on Day Two would be processed after the close of the market on Day Two at the $10.2650 unit value. Assume for purposes of the illustration that there was no net participant activity on Day Two.

Once the Unitized Employer Stock Fund is valued, KeyBank will determine what percentage of the liquidity component is the value of the overall Fund. This is done so that KeyBank can determine whether it is necessary to trade shares of the Employer Stock on Day Three in order that the liquidity component can stay within its target allowance. As such, $99,000/$10,264,000 = .0096453.

Since the liquidity component on Day Two is within the appropriate range, i.e., less than 1.2 percent but more than 0.8 percent, KeyBank will do nothing more to create (or reduce) additional liquidity.

On the other hand, if the net outflow of participant activity received prior to the cut-off time on Day One is more than the liquidity component, for example, $110,000, the following will happen:

	MV	Units	Unit value
Opening Balance	$10,000,000	1,000,000	$10.00
E/ee Contributions	0	0	10.00
E/er Contributions	0	0	10.00
Transfers In	0	0	10.00
Distributions	(50,000)	(5,000)	10.00
Loans	(5,000)	(500)	10.00
Transfers Out	(55,000)	(5,500)	10.00
(Sub-Total)	9,890,000	989,000	10.00

KeyBank will then post the net activity against the liquidity component of the Unitized Employer Stock Fund. Using the foregoing example, the account is overdrawn by $10,000, i.e., $100,000 less net activity of $110,000.

Prior to market opening on the next business day (Day Two), the liquidity component is negative.

Under this circumstance, KeyBank will refer to the Policy Agreement to determine what actions it should undertake to clear the overdraft and restore the Unitized Employer Stock Fund's liquidity component back to the target allowance.

KeyBank must determine how much liquidity the Unitized Employer Stock Fund requires to bring it back to target. In addition, KeyBank must clear the $10,000 overdraft. As such,

1% of $9,890,000 = $98,900 + $10,000 = $108,900.

1.2% of $9,890,000 = $118,680 + $10,000 = $128,680.

Thus, KeyBank will be required to sell shares of Employer Stock sufficient in amount to be at least $108,900 but not exceeding $128,680.

Brookshire Brothers, Ltd. (Brookshire), Located in Lufkin, Texas

[Application No. D–10894]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Transaction

If the exemption is granted, the restrictions of section 406(a)(1)(A)

through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the establishment by Brookshire of a minimum price guarantee (the Minimum Price Guarantee) for the valuation and purchase by Brookshire of Profit Sharing Stock owned by the Brookshire Brothers Employee Stock Ownership Plan (the ESOP), provided the conditions set forth in Section II are satisfied:

Section II. Conditions

A. The ESOP shall pay no consideration, interest or other fee or expense in connection with the Minimum Price Guarantee.

B. The Minimum Price Guarantee shall expire on the first date after December 22, 1999 upon which the fair market value of a share of the Profit Sharing Stock exceeds the minimum price per share established by the Minimum Price Guarantee.

Section III. Definitions

A. The term ''Brookshire'' means Brookshire Brothers, Ltd., a Texas limited partnership with headquarters in Lufkin, Texas.

B. The term ''Profit Sharing Plan'' means the Brookshire Brothers Profit Sharing Plan, as amended and restated effective April 30, 1988.

C. The term ''Profit Sharing Stock'' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on December 19, 1999.

D. The term ''Minimum Price Guarantee'' means the guarantee established pursuant to the ESOP whereby the value of the Profit Sharing Stock will be equal to the price of such stock prior to December 22, 1999 plus a 4% annual increase.

Effective Date: The proposed exemption, if granted, will be effective December 19, 1999.

Summary of Facts and Representations

1. Brookshire Brothers, Ltd. (Brookshire), has its principal place of business in Lufkin, Texas, and is engaged in the retail grocery industry.

2. Brookshire is the sponsor of the Brookshire Brothers Employee Stock Ownership Plan (the ESOP), adopted effective April 26, 1998. The ESOP has approximately 6,416 participants and approximately $47,385,548 in assets.

3. Brookshire also sponsors the Brookshire Brothers Profit Sharing Plan (the Profit Sharing Plan). As of December 19, 1999, the Profit Sharing Plan held approximately 600,182 shares of the common stock (the Stock) of Brookshire Brothers Holding, Inc. (Holding), Brookshire's parent company. Holding's Stock is not publicly traded.

4. On December 19, 1999, the Stock was transferred from the Profit Sharing Plan to the ESOP. Participants' respective interests in the Stock were credited to separate profit sharing accounts in the name of each participant established under the ESOP (Profit Sharing Accounts).

5. On December 22, 1999, the ESOP purchased 2,746,255 additional shares of the Stock from approximately 300 to 350 stockholders (the Historical Stockholders), which represented a controlling interest in Holding, in a cash-out merger (Cash-Out Merger).[14] To accomplish the Cash-Out Merger, the ESOP formed a subsidiary which then merged with and into Holding, with Holding surviving the merger. The Historical Stockholders of Holding received approximately $15.46 in cash, $2.44 in a note and .32 shares of Holding common stock for each share of the Stock owned prior to the Cash-Out Merger.[15] After the Cash-Out Merger, the ESOP owned approximately 71.8% of Holding and the Historical Stockholders owned 28.2% of Holding. In order to purchase the shares, the ESOP borrowed $62,765,907 from Brookshire and $9,900,000 from Holding, in transactions that Brookshire represents complied with the statutory exemptions contained in section 408(b)(3) of the Act and section 4975(d)(3) of the Code.[16]

6. The incurrence of debt in the Cash-Out Merger leveraged Brookshire and has depressed Holding's stock price. The value of the Stock as of April 22, 1999 was $22 per share, while the value of the Stock immediately following the Cash-Out Merger was approximately $14 per share. As of April 29, 2000, the value of the Stock was $15.21 per share. The 2000 appraisal was performed by Willamette Valuation Services.

7. To counteract the effect of the debt on the Profit Sharing Plan participants who had account balances prior to the Cash-Out Merger, the ESOP was designed to guarantee that the value of the Stock in the Profit Sharing Accounts would be at least equal to the price of such Stock before the Cash-Out Merger transaction (i.e., $22 per share) plus a 4% annual increase (the Minimum Price Guarantee). This would ensure that in the short run the Profit Sharing Plan participants would not be negatively impacted by the Cash-Out Merger transaction.

8. The Minimum Price Guarantee applies to the price per share that will be received by ESOP participants and beneficiaries for the Stock in their Profit Sharing Accounts upon a distribution of their Profit Sharing Accounts due to their retirement, death, disability or termination of employment. Participants do not have the right to a distribution from their Profit Sharing Accounts in the form of Stock; accordingly, if a distribution is to be made, the ESOP's trustee will put the Stock to Brookshire and the value of the Profit Sharing Account will be distributed to the participant in cash. Brookshire will bear the cost of any difference between the

[14] Brookshire represents that the acquisition of Holding's stock by the ESOP was exempt by reason of the statutory exemption under section 408(e). In relevant part, section 408(e) of the Act provides that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities as defined in section 407(d)(5) of the Act, if no commission is charged and the plan is an eligible individual account plan. Section 407(d)(5) of the Act defines a ''qualifying employer security'' to mean an employer security that is stock, a marketable obligation or an interest in a publicly traded partnership. An ''employer security'' is defined in section 407(d)(1) of the Act as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. Section 407(d)(7) of the Act sets forth the circumstances under which an entity will be considered an affiliate of another entity, and states in relevant part: ''A corporation is an affiliate of an employer if it is a member of any controlled group of corporations [as defined in section 1563(a) of the Code] * * * of which the employer who maintains the plan is a member. * * * An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary.'' In this regard, Brookshire represents that Brookshire and Holding are members of the same controlled group of corporations under section 1563(a) of the Code and, therefore, are affiliates for purposes of section 407(d)(7) of the Act. The Department expresses no opinion in this proposed exemption as to whether the acquisition and holding by the ESOP of Holding's common stock would be covered by section 408(e) of the Act and the regulations thereunder. The Department is not providing any relief herein for the acquisition and holding by the ESOP of Holding's common stock.

[15] The ESOP did not receive this consideration with respect to the Profit Sharing Stock. The ESOP held the Profit Sharing Stock prior to the Cash-Out Merger. The ESOP then acquired additional shares in the Cash-Out Merger, which was treated as a stock purchase for federal income tax purposes. Since the ESOP was the purchaser of additional shares, the Profit Sharing Stock already held by the ESOP was not cashed out.

[16] The Department expresses no opinion as to whether the loans satisfied section 408(b)(3) of the Act and section 4975(d)(3) of the Code. The Department also wishes to note that ERISA's general standards of fiduciary conduct would apply to the purchase of the Stock by the ESOP and the accompanying extensions of credit, and that satisfaction of the conditions of this proposal, if granted, should not be viewed as an endorsement of the entire transaction by the Department. Section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction.

actual value of the Stock and its value pursuant to the Minimum Price Guarantee.

9. The Minimum Price Guarantee will not take effect unless a prohibited transaction exemption is received from the Department. The Minimum Price Guarantee will expire as of the first date that the fair market value of Holding Stock exceeds the minimum price established by the guarantee following the Cash-Out Merger (*i.e.*, $22 per share plus the 4% annual increase).

10. Under the terms of the ESOP, the Stock will be valued by the independent trustee at least annually on the last day of the plan year, and on such other date or dates deemed necessary by the plan administrator. The trustee is LaSalle Bank, N.A., which has no other relationship with Brookshire or Holding. The trustee is required to determine the value of the Stock in good faith and based on all relevant factors for determining the fair market value of securities. The trustee's determination will include an appraisal of the Stock by an independent appraiser hired by the trustee.

11. In summary, it is represented that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act as follows:

(a) The exemption is administratively feasible because it involves only the application of the Minimum Price Guarantee;

(b) the exemption is in the interests of the ESOP and its participants and beneficiaries because such participants and beneficiaries will be protected until the value of the Stock recovers; and

(c) the exemption is protective of the rights of the ESOP's participants and beneficiaries because the total cost of the Minimum Price Guarantee will be borne by Brookshire.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by first class mail or personal delivery within 30 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate). Comments and requests for a public hearing are due within sixty (60) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

The Golden Comprehensive Security Program (the Security Program), The Golden Retirement Savings Program (the Savings Program); and (collectively, the Plans); Located in New York, New York

[Application Nos. D–10913; D–10914]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 27, 2000, to the past acquisition and holding by the Savings Program of 1,896.294 publicly traded warrants and by the Security Program of 2,073.554 publicly traded warrants (the Warrants) of Golden Books Family Entertainment, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions were met:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding (the Bankruptcy) pursuant to which all holders of the old common stock (the Old Stock) of the Employer were treated in the same manner;

(b) The Plans had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding;

(c) The Warrants were acquired automatically and without any action on the part of the Plans; and

(d) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plans pay any fees or commissions in connection with the holding of the Warrants.

Effective Date: This exemption, if granted, will be effective as of January 27, 2000.

Summary of Facts and Representations

1. The Employer is a Delaware corporation with its principal place of business in New York, New York. It publishes, produces, licenses and markets an extensive range of children's and family-related media and entertainment products. The Employer has two business segments, which it operates primarily through its principal operating subsidiary, Golden Books Publishing: (i) Consumer Products, which includes its Children's Publishing division, and (ii) Entertainment, which operates as the Golden Books Entertainment Group division. As of June 16, 2000, the Employer employs approximately 560 individuals, calculated on a full-time equivalent basis.

2. The Savings Program and the Security Program are both defined contribution profit sharing plans maintained by Golden Books Publishing pursuant to sections 401(a) and 401(k) of the Code. The Savings Program covers groups of employees of Golden Books Publishing and any other United States subsidiary of Golden Books Publishing to which the Savings Program has been extended by his or her employer, either unilaterally or through collective bargaining. Participants under the Savings Program generally include part-time and full-time hourly employees and retired hourly (collectively bargained and non-collectively bargained) employees. The Savings Program is administered by the GBPC Benefit Plans Administration Committee (the Committee) appointed by the Employer. As of December 31, 1999, the Savings Program had approximately 639 participants and total assets in excess of $31 million.

The Security Program generally covers salaried employees (*i.e.*, employees whose basic compensation for services is paid in fixed amounts at stated intervals without regard to the number of hours worked) of Golden Books Publishing and any other United States subsidiary of Golden Books Publishing to which the Security Program has been extended by his or her employer. Employees who belong to a collective bargaining unit of employees represented by a collective bargaining representative are not eligible to participate in the Security Program. The Security Program is administered by the Committee. As of December 31, 1999, the Security Program had approximately 822 participants and total assets in excess of $64 million.

At the time of the transaction, the percentage of the fair market value of the total assets of the Security Program that was involved in the transaction was less than 1%. The percentage of the fair market value of the total assets of the Savings Program that was involved in the transaction was less than 1%.

3. Putnam Fiduciary Trust Company (the Trustee), a trust company having its principal place of business in Boston, Massachusetts, is the trustee for the Plans. All money and such other property as shall be acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee, all investments made therewith and

proceeds thereof and all earnings and profits thereon, less the payments which shall have been made by the Trustee, are held under the Western Publishing Group, Inc. Master Retirement Trust, the Plans' trust. The Trustee exercises no investment discretion over the assets involved in the transaction.

4. Under each of the Plans, participants previously could elect to have a portion or all of their tax deferred contributions, employer matching contributions and participant after-tax contributions invested in one or more investment funds established by the Committee, including the Parent Company Stock Fund, which invested solely in shares of Old Common Stock. In addition, employer profit sharing contributions could be, until the amendment of the Plans to eliminate the Parent Company Stock Fund as an investment alternative, invested by the Committee in the Parent Company Stock Fund. Approximately 473 participants out of a total of approximately 1,461 participants in the Plans have assets invested in the Parent Company Stock Fund.

5. In February 1999, the Employer reached an agreement with its major creditors pursuant to which its then existing long-term debt would be significantly reduced and its existing trade obligations would be paid in full. In accordance with that agreement, the Employer, as well as Golden Books Publishing and Golden Books Home Video, Inc. (the Debtors) filed petitions for reorganization under Chapter 11 of the United States Bankruptcy Code on February 26, 1999. Under an order dated September 24, 1999, the Bankruptcy Court confirmed the Debtor's Amended Joint Plan of Reorganization (the Reorganization Plan). Significant components of the Reorganization Plan were approved by the Bankruptcy Court on December 22, 1999. On January 27, 2000 (the Effective Date), the Debtors formally emerged from protection under the Bankruptcy Code upon the consummation of the Reorganization Plan.

The Reorganization Plan (i) divided claims and equity interests into various classes, (ii) set forth the treatment afforded to each class, and (iii) provided the means by which the Debtors would be reorganized under Chapter 11 of the Bankruptcy Code. Under the Reorganization Plan, the Debtors significantly reduced their long-term debt, secured a $60 million financing arrangement and are paying all trade debt in full with interest.

Specifically, the Reorganization Plan provided for, among other things, the cancellation of all of the approximately 28 million shares of Old Common Stock outstanding at January 27, 2000 and the issuance to all holders of Old Common Stock, including the Plans, as of such date of 175,000 Warrants, in the aggregate .[17] The Warrants have normal and customary terms for a security of this nature.

Approximately 473 participants (the Participants) under the Plans were effected by the cancellation of the Old Common Stock and the issuance of the Warrants. On the Effective Date, the Participants held through the Parent Company Stock Fund 731,753.322 shares of Old Common Stock and upon consummation of the Reorganization Plan the Participants received in the aggregate 3,969.848 Warrants to purchase an equal number of shares of New Common Stock. The Savings Program holds 1,896.294 Warrants and the Security Program holds 2073.554 Warrants.

The Reorganization Plan was approved by the affirmative vote of a majority of the more than 28 million outstanding shares of Old Common Stock entitled to vote on the Reorganization Plan. Because of the nominal amount of Old Common Stock held by the Plans in relation to the other stockholders of the Employer, the Plans had little, if any, ability to affect the negotiation of the Reorganization Plan. The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the Old Stock of the Employer were treated in the same manner as a result of the Reorganization Plan. The Warrants were acquired by the Plans automatically and without any action on the part of the Plans. The Plans did not pay any fees or commissions in connection with the receipt and holding of the Warrants.

6. Currently, the disposition of the Warrants is pending the Bankruptcy. To the extent that there is or will be any discretion to be exercised regarding the Warrants, all decisions regarding the holding and disposition of the Warrants by the Plans will be made by the individual plan participants whose accounts in the Plans received the Warrants in connection with the Bankruptcy proceeding.

7. It is represented that the Warrants do not constitute qualifying employer securities for purposes of section 407(d)(5) of the Act. The Employer represents that the Warrants held by the Plans would constitute an ''employer security'' within the meaning of 407(d)(1) of the Act but not a ''qualifying employer security'' under section 407(d)(5) of the Act inasmuch as the Warrants do not fall within any of the covered categories. Therefore, the Employer requests retroactive exemptive relief from the Department.

8. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the Old Stock of the Employer were treated in the same manner;

(b) The Plans had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding;

(c) The Warrants were acquired automatically and without any action on the part of the Plans; and

(d) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plans pay any fees or commissions in connection with the holding of the Warrants.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

The FHP International Corporation 401(k) Savings Plan (the Plan); and The FHP International Corporation PAYSOP (the PAYSOP; together, the Plans), Located in Santa Ana, California

[Application Nos. D–10916 and D–10917]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application

[17] The Department also wishes to note that ERISA's general standards of fiduciary conduct would apply to the past acquisition and holding of the Old Stock by the Plans. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries in a prudent fashion.

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, from April 21, 1997 through May 20, 1997, to: (1) The past receipt by the Plans of certain rights (the Talbert Rights) to purchase shares of common stock (the Talbert Common Stock), par value $.01 per share, of Talbert Medical Management Holding Corporation (Talbert); (2) the past holding of the Talbert Rights by the Plans; and (3) the disposition or exercise of the Talbert Rights by the Plans; provided that the following conditions are satisfied:

(A) The Plans' acquisition and holding of the Talbert Rights resulted from independent acts of FHP International Corporation (FHP) and Talbert as corporate entities, and all holders of common stock of FHP (FHP Common Stock) were treated in a like manner, including the Plans;

(B) With respect to Talbert Rights allocated to the Plans, the Talbert Rights were acquired solely for the accounts of participants who had directed investment of all or a portion of their account balances in FHP Common Stock pursuant to Plan provisions for individually-directed investment of participant accounts; and

(C) With respect to Talbert Rights allocated to the Plans, all decisions regarding the holding, disposition or exercise of the Talbert Rights were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Talbert Rights, including all determinations regarding the exercise or sale of the Talbert Rights, except for those participants who failed to file timely and valid instructions concerning the exercise of the Talbert Rights (in which event the Talbert Rights were sold).

Effective Date: This exemption, if granted, will be effective from April 21, 1997 through May 20, 1997.

Summary of Facts and Representations

1. Prior to February 14, 1997, PacifiCare Operations, Inc. (formerly named ''PacifiCare Health Systems, Inc.'') (Old PacifiCare) was a publicly traded corporation, with shares of its common stock traded on the NASDAQ National Market. Old PacifiCare and its affiliated employers were engaged in the operation of numerous health maintenance organizations (HMOs), health plans and other similar businesses. Prior to February 14, 1997, FHP was a publicly traded corporation, with shares of its common stock traded on the NASDAQ National Market. FHP and its affiliated employers were actively engaged in the operation of numerous HMOs, health plans and other similar businesses.

2. Pursuant to the Amended and Restated Agreement and Plan of Reorganization among Old PacifiCare, N–T Holdings, Inc., Neptune Merger Corp., Tree Acquisition Corp. and FHP, dated as of November 20, 1996, (the Merger Agreement), Old PacifiCare and FHP became subsidiaries of a new corporation, PacifiCare Health Systems, Inc. (New PacifiCare) on February 14, 1997 (the Merger).

3. Prior to the Merger, Old PacifiCare caused N–T Holdings, Inc., Neptune Merger Corp. and Tree Acquisition Corp. to be formed and organized in anticipation of the Merger Agreement. Neptune Merger Corp. and Tree Acquisition Corp. were each formed as wholly-owned subsidiaries of N–T Holdings, Inc. Upon the consummation of the Merger on February 14, 1997, Neptune Merger Corp. was merged into and with Old PacifiCare, and Old PacifiCare became a wholly-owned subsidiary of New PacifiCare. Simultaneously, Tree Acquisition Corp. was merged into and with FHP, and FHP became a wholly-owned subsidiary of New PacifiCare. N–T Holdings, Inc. was then renamed ''PacifiCare Health Systems, Inc.,'' and, after the consummation of the Merger, was the parent company of Old PacifiCare and FHP. Shares of common stock of New PacifiCare are traded on the NASDAQ National Market.

4. As consideration for the Merger, holders of shares of FHP Common Stock, par value $.05 per share, including the Plans, received cash, shares of New Pacificare Class A common stock, par value $.01 per share, shares of New Pacificare Class B common stock, par value $.01 per share, and were eligible to receive Talbert Rights in exchange for the shares of FHP Common Stock held on the date of the Merger.

5. Also, in connection with the Merger, Talbert Medical Management Corporation (TMMC) and Talbert Health Services Corporation (THSC), which were indirect, wholly-owned subsidiaries of FHP prior to February 14, 1997, became wholly-owned subsidiaries of Talbert. Subsequent to the Merger, Talbert became a privately held corporation with no affiliation with FHP, Old PacifiCare or New PacifiCare. However, the applicant represents that Talbert was an employer of employees covered by the Plan at the time of the issuance of the Talbert Rights.[18]

6. The issuance of the Talbert Rights was commenced by Talbert effective as of April 21, 1997. Talbert Rights were issued pursuant to a public offering of such rights, and the Talbert Rights issued to the Plans were registered with the Securities and Exchange Commission. Participants (and the beneficiaries of deceased participants) in the Plans were offered the opportunity to direct the independent trustee of the Plans (the Trustee) to exercise or sell the Talbert Rights credited to their accounts in the Plans in accordance with the Plans' procedures, described below. Upon their issuance, and until the closing of the Talbert Rights offering period on May 20, 1997, Talbert Rights were tradable on the NASDAQ National Market. When the offering was completed on May 20, 1997, all of the Talbert Rights held by the Plans had been exercised or sold on or before that date. The shares of Talbert Common Stock received upon the exercise of the Talbert Rights, and the proceeds received upon the sale of the Talbert Rights, were allocated to the accounts of participants and beneficiaries in accordance with the terms of the Plans, described below.

7. In September, 1997, MedPartners, Inc., an unrelated party, commenced a tender offer for the outstanding shares of Talbert Common Stock, including the shares of Talbert Common Stock held by the Plans. Participants (and the beneficiaries of deceased participants) in the Plans were offered the opportunity to direct the Trustee with respect to the tender of shares of Talbert Common Stock credited to their accounts in the Plans in accordance with procedures described in the Plans. The Plan Committees directed the Trustee with respect to the tender of shares of Talbert Common Stock credited to the accounts of participants and beneficiaries for which tender directions were not received. The tender offer closed and the Plans received cash for shares of Talbert Common Stock tendered by the Plans on September 19, 1997. Effective as of the closing of the tender offer, Talmed Merger Corporation, a wholly-owned subsidiary of MedPartners, Inc., merged into Talbert, and all of the remaining shares

[18] Section 407(d)(1) of the Act defines the term ''employer security'' as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. Section 3(5) of the Act defines the term ''employer'' to include any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan. In this regard, the Department is providing no opinion in this proposed exemption as to whether the Talbert Rights were considered an ''employer security'' at the time of their issuance by Talbert.

of Talbert Common Stock held by the Plans were converted to cash. Effective upon such merger, Talbert became a wholly-owned subsidiary of MedPartners, Inc.

8. Prior to February 14, 1997, FHP and its affiliated employers maintained the FHP International Corporation Employee Stock Ownership Plan (the Prior Plan). The Prior Plan consisted of three separate, but complementary, parts which were designed to satisfy the specific rules applicable to each part. The first part was an employee stock ownership plan intended to qualify under Code sections 401 and 4975(e)(7), the second part was a stock bonus plan intended to qualify under Code section 401, which included a cash or deferred arrangement intended to qualify under section 401(k), and the third part was a payroll-based tax credit employee stock ownership plan intended to qualify under Code sections 41, 401, 409 and 4975(e)(7). No additional employer contributions were allocated to the third part of the Prior Plan as of any date after December 31, 1986.

9. Effective as of February 14, 1997, the third part of the Prior Plan, which was a payroll-based tax credit employee stock ownership plan, was ''spun off'' into the PAYSOP as a separate plan. The PAYSOP was terminated effective as of February 14, 1997. FHP and certain of its subsidiaries continue to maintain the PAYSOP pending the complete termination and winding up of the PAYSOP. The estimated number of PAYSOP participants affected by the exemption proposed herein is 771. The percentage of the fair market value of the total assets of the PAYSOP involved in the subject transaction is 2.75%.

10. The first and second parts of the Prior Plan were continued as the Plan (which was renamed ''The FHP International Corporation 401(k) Savings Plan'' at that time). Effective as of February 14, 1997, the Plan was converted to a profit sharing plan intended to qualify under section 401 of the Code which includes a cash or deferred arrangement intended to qualify under Code section 401(k). Also, effective as of February 14, 1997, the Plan was amended to eliminate those provisions necessary for it to qualify as a stock bonus plan, an employee stock ownership plan or payroll-based tax credit employee stock ownership plan, to eliminate distributions in shares of FHP common stock, and to change certain other provisions. The estimated number of Plan participants affected by the exemption proposed herein is 9,060. The percentage of the fair market value of the total assets of the Plan involved in the subject transaction is 1.65%.

11. On or about April 1, 1999, account balances under the Plan not attributable to ''Talbert Individuals'' (as defined in the Employee Benefits and Compensation Allocation Agreement,[19] dated as of February 14, 1997) were transferred to the PacifiCare Health Systems, Inc. Savings and Profit Sharing Plan. As of April 15, 1999, FHP's sponsorship of the Plan terminated, and the then-members of the Administrative Committee were removed. Under the Assumption Agreement dated March 31, 1999, MedPartners, Inc. (MedPartners) became the sponsor of the Plan, but FHP retained all liability for making required filings relating to the period of time during which the FHP was a participating employer in the Plan. After the assumption of the Plan by MedPartners, MedPartners changed its name to ''CareMark Rx, Inc.,'' and in May, 1999, the Plan was merged into another plan maintained by CareMark Rx, Inc. called the CareSave 401(k) Retirement Plan.

12. The FHP International Corporation 401(k) Savings Plan and The FHP International Corporation PAYSOP (i.e., the Plans) permitted participants to direct the investments of their accounts in the Plans into investment funds established under the Plans. Effective as of February 14, 1997, the Plans provided for investment in shares of New PacifiCare Class A Common Stock, shares of New PacifiCare Class C Common Stock, Talbert Rights and shares of Talbert Common Stock in accordance with the terms therein. The Plans provided that Talbert Rights, when issued to each Plan's Trustee, were to be allocated to the Talbert Common Stock Investment Fund, and were to be exercised or sold in accordance with the Plans' provisions. The Plans provided that a participant would have the opportunity to direct the exercise or sale of some or all of the Talbert Rights credited to such participant's accounts in the Plans. However, a physician in a position to make referrals to Talbert Health Services Corporation was not provided the opportunity to direct the exercise of the Talbert Rights credited to his or her accounts, and the Talbert Rights credited to such a participant's accounts were to be sold by the Plans if the Talbert Rights had value at the time of the sale.

13. A participant entitled to direct the exercise or sale of the Talbert Rights credited to his or her account could make such direction in accordance with a telephonic procedure not later than 1 p.m. Pacific Daylight Time on May 13, 1997.[20] Materials were provided to the participants by letter dated April 21, 1997. Thus, participants had approximately 20 days in which to act. The materials received by the participants included: (a) Final Prospectus dated April 21, 1997 relating to shares of Talbert Common Stock and the Talbert Rights pursuant to the Talbert Rights offering; (b) Summary Plan Description for the FHP International Corporation Employee Stock Ownership Plan (the ESOP); (c) Prospectus Supplement dated April 21, 1997 for the Plan and the PAYSOP; and (d) March 10, 1997 letter describing the changes in the ESOP. In the case of a participant who failed to make a timely direction in accordance with such telephonic procedure, the Plans provided that the Talbert Rights credited to his or her account were to be sold by the Plan if the Talbert Rights had value at the time of the sale.

14. The Plans provided that in the case of a participant who directed the exercise of some or all of the Talbert Rights credited to his or her accounts, the amounts held in the other investment funds in which such participant's accounts were invested (i.e, those investment funds other than the investment funds in which the Talbert Rights or shares of NewPacifiCare stock were held) would be liquidated proportionately to the extent necessary to provide the exercise price with respect to Talbert Rights being exercised. In the event all of such investments were liquidated, the participant's Plan or PAYSOP investments in New PacifiCare Class A Common Stock and New PacifiCare Class B Common Stock would be liquidated to the extent necessary to provide such exercise price.

15. The decision whether to sell the Talbert Rights allocated to a particular participant's account was made by the participant. Once the decision to sell had been made by the Plans' participants, the Plan Committees then directed the Trustee when, during the five trading days beginning on May 14, 1997 and ending on May 20, 1997, the Talbert Rights would be sold (if they had value at the time of the sale). The reason the Talbert Rights were sold over a five-day period (instead of all at once) was to avoid adversely affecting the price of the rights. The Plan

[19] Talbert Individuals are defined in that Agreement to include, essentially, active employees and former employees of Talbert, TMMC and THSC, their dependents, beneficiaries, and alternate payees under qualified domestic relations orders.

[20] In the case of such a participant who was a resident of Guam and who gave his or her direction in writing, such direction had to have been received not later than May 8, 1997.

Committees, assisted by Buck Consultants (Buck), established a special telephone line containing a menu driven voice response system. The line was manned by employees of Buck. Participants were notified in writing that their elections were to be made through the use of this telephone system. The elections were collected by Buck, and aggregate results for the Plans were forwarded to the Plans' Trustee, Wells Fargo Bank (the Bank). The Bank then exercised and sold the appropriate number of Talbert Rights in accordance with the Participants' directions. Each Talbert Right sold was to be treated as having been sold for the average sale price (net of selling expenses) of the Talbert Rights sold by the Plans. The proceeds from the sale of the Talbert Rights credited to a participant's accounts were to be invested in accordance with such participant's existing investment directions applicable to new contributions, and if there were no such directions, in an investment fund designated under the Plan if the Talbert Rights had value at the time of the sale. Talbert Rights held as unallocated forfeitures were to be sold by the Plans if the Talbert Rights had value at the time of the sale.

16. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' acquisition of the Talbert Rights resulted from the independent acts of FHP and Talbert as corporate entities; (b) all holders of FHP Common Stock, including the Plans, were treated in a like manner with respect to the Talbert Rights; (c) with respect to Talbert Rights allocated to the Plans, the Talbert Rights were acquired solely for the accounts of participants who had directed investment of all or a portion of their account balances in FHP Common Stock pursuant to plan provisions for individually-directed investment of participant accounts; (d) the Talbert Rights offering period extended only from April 21, 1997 through May 20, 1997, so the Talbert Rights were held by the Plans for no more than 30 days; (e) the Plans' participants and beneficiaries were afforded a reasonable opportunity to direct the sale or exercise of the Talbert Rights credited to their accounts; (f) the Plans' participant direction procedure was administered by an independent fiduciary (*i.e.,* the Bank); and (g) the Plan Committees exercised investment discretion only with respect to undirected investments in Talbert Rights and acted only in accordance with the procedures specified in the disclosures made to the Plan participants who received the Talbert Rights.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of September, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10997]

Notice of Proposed Individual Exemption To Modify Prohibited Transaction Exemption 97–08 (PTE 97–08) Involving Morgan Stanley Dean Witter & Co. Incorporated (MSDW&Co) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration U.S. Department of Labor

ACTION: Notice of proposed individual exemption to modify PTE 97–08.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend PTE 97–08 (62 FR 4811, January 31, 1997), an exemption which was granted to Morgan Stanley & Co., Incorporated (MSC), a subsidiary of MSDW&Co. PTE 97–08 provided relief for certain securities lending, principal transactions, and extensions of credit. If granted, this proposed exemption to modify PTE 97–08 would permit a U.S. affiliate of a foreign broker-dealer to guaranty the obligations of such broker-dealer that arise in connection with transactions described in PTE 97–08 and would affect the participants and beneficiaries of certain employee benefit plans (the Plans or Plan) participating in such transactions and the fiduciaries with respect to such plans.

EFFECTIVE DATE: If granted, the proposed amendments will be effective, as of August 25, 1995, the effective date of PTE 97–08.

DATES: Written comments and requests for a public hearing should be received by the Department on or before October 22, 2001.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–10997.

The application pertaining to the proposed exemption to amend PTE 97–08 and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would modify PTE 97–08. PTE 97–08 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–08 provides retroactive exemptive relief from the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for certain principal transactions between Plans and broker-dealers affiliated with MSC which are subject to British law (the MSC/UK Affiliates), the lending of securities that are assets of Plans to MSC/UK Affiliates, and any extensions of credit to Plans by MSC/UK Affiliates to permit the settlement of securities transactions or in connection with the writing of options contracts; provided certain conditions are satisfied.

The proposed amendment has been requested in an application filed on behalf of MSDW&Co, MSC, and any current and future U.K. broker-dealer affiliates of MSDW&CO and MSC (the Applicants), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

MSDW&Co is the parent holding company for a number of subsidiaries which, among other businesses, perform securities underwriting, distribution and trading, merger, acquisition, restructuring and other corporate finance services for clients around the world and provides investment advisory services, equipment and other finances businesses credit card services. Further, MSDW&Co currently has foreign affiliates that are registered under foreign broker-dealer registration laws that are represented to be comparable to the Securities Exchange Act of 1934 (the Exchange Act).

MSC, an affiliate of MSDW&Co, is a broker-dealer registered with the Securities and Exchange Commission under the Exchange Act, providing, among other things, investment banking, securities and asset management services to institutional investors, including multinational corporations, governments, emerging growth companies, financial institutions, employee benefit plans, universities, foundations, and individual investors.

Pursuant to PTE 97–08, the MSC/UK Affiliates, in particular Morgan Stanley & Co. International LTD, which is regulated by the Securities and Futures Authority in the United Kingdom, effective August 25, 1995, may enter into principal transactions with Plan accounts, borrow securities from such Plan accounts, and engage in extensions of credit to such Plans, including those in connection with the settlement of securities transactions and the writing of options contracts; provided certain conditions, as set forth in PTE 97–08, are satisfied. With respect to that section of PTE 97–08 that permits extensions of credit, the MSC/UK Affiliates have found that Plans often seek a guaranty of the MSC/UK Affiliates' obligations, particularly in connection with the writing of options contracts. The requested modification to PTE 97–08 would permit a guaranty to be given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, so long as such guaranty when given: (a) Is in connection with one of the transactions, described in Section I (A), (B), or (C) of PTE 97–08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97–08 have been satisfied; (b) is lawful under the applicable securities laws; (c) is provided at no separate cost to the Plan; and (d) is not a prohibited transaction under section 503(b) of the Code. In the absence of a modification to PTE 97–08, a violation of section 406(a)(1)(B) of the Act could occur, if MSDW&Co or one of its affiliates were a party in interest with respect to a Plan and also provided a guaranty to such Plan. It is represented that the Plans that potentially could be affected by this proposed modification of PTE 07–08 have not been identified, either because they are not capable of being known or are too numerous to mention.

The Applicants have requested that the modification to PTE 97–08 be made retroactive, as of August 25, 1995, the effective date of PTE 97–08. The Applicants represent that, to their knowledge, while there has never been an occasion on which a guaranty has been drawn on by a Plan, guaranties have been made with respect to many transactions.

The Applicants maintain that principal transactions, securities lending transactions, and extensions of credit in connection with the global securities business are a typical and increasingly common part of a Plan's investment strategy. It is represented that guaranties by affiliates of broker-dealers are common in many transactions, and in particular, in the purchase and sale of options. The Applicants argue that to the extent that an affiliate of a broker-dealer adds a credit guaranty to the obligations of such broker-dealer, a Plan would be advantaged.

The proposed modification of PTE 97–08 would be administratively feasible, because the guaranty will be part of the contract between the Plan and the party in interest and will be enforceable by the Plan in the U.S. courts. Further, because Standard & Poor's provides a rating for the outstanding debt of MSDW&Co (AA−, as of May 2001), Plans are able to effectively monitor the credit quality of the guaranty.

The Applicants maintain that the proposed modification of PTE 97–08 would be in the interest of affected Plans. In this regard, it is represented that the guaranty can only benefit Plans, as it provides an additional party for a Plan to look to in the event of a default by a broker-dealer.

The proposed modification of PTE 97–08 will be protective of Plans, because the guaranty will add safety and provide credit enhancement to many securities transactions. If the requested modification of PTE 97–08 were to be denied, affected Plans would not have the benefit in their dealings with parties in interest of the security provided by the guaranty.

In summary, the Applicants represent that the proposed modification of PTE 97–08 satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The guaranty has been and will be given in connection with any transaction

which is exempt, pursuant to PTE 97–08; (b) the guaranty has been and will be lawful under the applicable securities laws; (c) the guaranty has been and will be provided at no separate cost to the Plan; (d) the guaranty has not been and will not be a prohibited transaction under section 503(b) of the Code; (e) the guaranty has been and will be enforceable by the Plan in the U.S. courts; (f) Plans have benefited and will benefit from the addition of a credit guaranty by MSDW&Co of the obligations of its broker-dealer affiliates; (g) various rating agencies are able to determine the quality of the outstanding debt of MSDW&Co, thus providing a mechanism by which Plans are able to monitor the viability of the guaranty; (h) Plans have had and will have an additional party to look to in the event of a default by a broker-dealer.

Notice to Interested Persons

Notification of the publication of the Notice of Proposed Exemption to Modify PTE 97–08 (the Notice) will be mailed by first class mail to those Plan accounts that trade most frequently with the MSC/UK Affiliates. Such notification will be given within 15 days of the publication of the Notice in the **Federal Register**. The notification will contain a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the Notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) or (F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 97–08, as modified by this Notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 97–08 to include in Section I an additional transaction (D), as set forth below:

Section I. Transactions

D. If the exemption is granted, effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to a guaranty given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, provided that the guaranty when given: (a) Is in connection with one of the transactions, described in Section I(A), (B), or (C) of PTE 97–08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97–08 have been satisfied; (b) is lawful under the applicable securities laws; (c) is provided at no separate cost to the Plan; and (d) is not a prohibited transaction under section 503(b) of the Code.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 97–08, refer to the proposed exemption and the grant notice that are cited above.

Signed at Washington, DC, this 4th day of September, 2001.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–22480 Filed 9–6–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on September 21, 2001, at 1:30 p.m., at the Houston I meeting room on the second floor of the Double Tree Guest Suites, 303 W. 15th Street in Austin, Texas.

The agenda for the meeting will be the Presidential library programs and a discussion of several critical issues including dialogue concerning the symposium on the ''Future of Presidential Libraries'' and a report by

the Archivist on recent developments at NARA.

The meeting will be open to the public. For further information, contact David Peterson at 301–713–6050.

Dated: August 31, 2001.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 01–22483 Filed 9–6–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171), NSF.

Date/Time: September 21, 2001; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 970, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open (Members of the public who wish to attend should arrange access ahead of time with the contact person listed below).

Contact Person: Dr. Stuart Plattner, Program Director; Division of Behavioral and Cognitive Sciences, NSF, Suite 995; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8740.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on issues related to the use of human subjects in social and behavioral research.

Agenda

Discussions addressing the following topics:

Foreign Institutional Review Boards (IRBs)
Training (for principal investigators, research personnel, IRBs)
Consent (forms, signing, group/individual, students as research subjects)
Ethnography/oral history; ''ethical proofreading''
Confidentiality/privacy
Secondary subjects/secondary data; linking data
Expanding the ''exempt'' category
Deception
Subpart ''D'' of the Common Rule
Research on the World Wide Web
Data archiving

Dated: September 4, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–22518 Filed 9–6–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1; Exemption

1.0 Background

The AmerGen Energy Company, LLC (the licensee) is the holder of Facility Operating License No. DPR–50 which authorizes operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Dauphin County in Pennsylvania.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, Appendix G requires, in part, that pressure-temperature (P/T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, Appendix G states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that these limits be at least as conservative as those obtained by following the methods of analysis and the margins of safety of the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G.

Pressurized-water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundary (RCPB) from being operated outside of the boundaries established by the P/T limit curves and to provide pressure relief of the RCPB during low temperature overpressurization events. The licensee is required by the TMI–1 Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P/T limit curves in the TMI–1 TS.

By an application dated March 29, 2001, the licensee requested amendments to the P/T limit curves in the TS. In the same application, the licensee requested an exemption from application of specific requirements of 10 CFR part 50, Appendix G, and 10 CFR part 50, Section 50.61(a)(5), in order to address provisions of amendments to the TS P/T limits curves. Specifically, the exemption would instead allow the use of ASME Code Cases and an alternative approach as follows:

1. Code Case N–588, which permits the use of circumferentially-oriented flaws in circumferential welds for development of P/T limits,

2. Code Case N–640, which permits application of the lower bound static initiation fracture toughness value equation as the basis for establishing the P/T curves in lieu of using the lower bound crack arrest fracture toughness value equation, and

3. The master curve approach for determining the initial reference temperature value for weld metal WF–70 in the TMI–1 reactor vessel.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The three exemptions and their associated special circumstances are discussed below.

3.1 Code Case N–588

The licensee has proposed an exemption to allow use of ASME Code Case N–588 in conjunction with ASME Section XI and 10 CFR Part 50, Appendix G, to determine P/T limits for TMI–1. The proposed amendment to revise the P/T limits for TMI–1 relies in part on the requested exemption. These revised P/T limits have been developed using postulated flaws in the circumferential orientation for the circumferential weld in the TMI–1 RPV, in lieu of postulating axial flaws in the circumferential welds.

The use of circumferential flaws in circumferential welds is more appropriate than the use of axial flaws in circumferential welds. Since the flaws postulated in the development of P/T limits have a through-wall depth of one-quarter of the vessel wall thickness (1.94 in. for the TMI–1 RPV), the length of the postulated flaw, six times the depth, is more than 11 inches. For the circumferential weld in the TMI–1 RPV, an axial flaw of this length centered at the weld would place the tips of the postulated flaw within the adjacent base metal above and below the weld.

Therefore, the only way to maintain a flaw within the circumferential weld metal is to postulate a circumferential flaw within the weld, as accomplished using Code Case N–588. For the base metals adjacent to the circumferential welds, axial flaws are and continue to be postulated for the development of P/T limits.

The underlying purpose of ASME Section XI and 10 CFR Part 50, Appendix G, is to ensure that (1) the RCPB be operated in a regime having sufficient margin to ensure that when stressed the vessel boundary behaves in a non-brittle manner and the probability of a rapidly propagating fracture is minimized and (2) P/T operating and test curves provide margin in consideration of uncertainties in determining the effects of irradiation on material properties.

Application of Code Case N–588 to determine P/T operating and test curve limits per ASME Section XI, Appendix G, provides appropriate, conservative procedures to determine limiting maximum postulated defects and to consider those defects in the P/T limits. This application of the code case maintains the margin of safety for circumferential welds equivalent to that originally contemplated for plates/forgings and axial welds. Therefore, pursuant to 10 CFR 50.12(a)(2)(ii), application of the code case would continue to achieve the underlying purpose of the rule, and application of 10 CFR part 50, Appendix G in these circumstances is not necessary to achieve that purpose.

3.2 Code Case N–640

The licensee has proposed an exemption to allow use of the ASME Code Case N–640 in conjunction with ASME Section XI and 10 CFR part 50, Appendix G, to determine P/T limits for TMI–1. The proposed license amendment to revise the TS P/T operating limits for TMI–1 relies, in part, on the requested exemption. These revised P/T operating limits have been developed using the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1, in lieu of the K_{IA} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the lower bound for fracture toughness. The other margins involved with the ASME Section XI, Appendix G process of determining P/T limit curves remain unchanged.

Use of the K_{IC} curve in determining the lower bound fracture toughness in the development of the P/T operating limits curve is more technically correct than using the K_{IA} curve. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The licensee has determined that the use of the initial conservatism of the K_{IA} curve when the curve was codified in 1974 was justified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{IA} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P/T curves based on the K_{IC} curve will enhance overall plant safety by opening the P/T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the reactor coolant system (RCS) is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Section XI, and the minimum required pressure for the reactor coolant pump (RCP) seals adjusted for instrument uncertainties.

Since the RCS P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of TMI–1 with these P/T curves without the relief provided by ASME Code Case N–640 may unnecessarily restrict the P/T operating window, especially at low temperature conditions. The operating window becomes more restrictive with continued reactor vessel service. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served, and application of 10 CFR Part 50, Appendix G, in these circumstances is not necessary to achieve that purpose.

In summary, the ASME Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

3.3 Master Curve Approach

The licensee has proposed an exemption from 10 CFR Part 50.61(a)(5) to allow the use of the master curve approach as an alternative to Paragraph NB–2331 of the ASME Code to determine the initial reference temperature (RT_{NDT}) value for weld metal WF–70 in the TMI–1 reactor vessel. The evaluation was part of a pressurized thermal shock (PTS) reevaluation for the TMI–1 RPV.

The current Charpy V-notch and drop weight-based methodology described in NB–2331 establishes an RT_{NDT} value and then relies on surveillance data from the testing of Charpy specimens and/or general material embrittlement models incorporated into Regulatory Guide 1.99, Revision 2 to predict the amount this value will shift due to a given level of neutron radiation exposure. This ''initial plus shift'' methodology has been consistently used to assess RPV embrittlement in the U.S. The master curve approach, however, proposes that ''direct measurement'' of fracture toughness can be made on unirradiated specimens.

The unirradiated RT_{NDT} for WF–70 weld metal was determined from drop weight tests and fracture toughness tests from welds fabricated with WF–70 and WF–209–1 weld metal. Since WF–70 and WF–209–1 welds were fabricated using the same heat number of weld wire and the same type of flux, their material properties are considered equivalent. Charpy V-notch impact and drop weight tests (the current methodology) were applied to the WF–70 weld metal by the licensees for Zion Nuclear Power Station, Units 1 and 2, and Oconee Nuclear Station, Units 1, 2, and 3, in the early 1990s for a PTS evaluation. The tests resulted in wide variability in RT_{NDT} values. The staff concluded that the large uncertainty in RT_{NDT} values for WF–70 weld metal is due to the low upper-shelf behavior of the material. Therefore, the definition of RT_{NDT} in the ASME Code is not applicable for WF–70 weld metal due to the large variability in RT_{NDT} values. In lieu of using Charpy V-notch and drop weight data, the licensee proposed to determine the initial reference temperature value using the test results from the master curve methodology. Since the licensee did not follow the method in Section III of the ASME Code, the methodology for determining the RT_{NDT} of WF–70 does not meet the requirements of 10 CFR 50.61 and requires an exemption.

By letter dated February 22, 1994, the NRC approved the use of the master curve approach for the Zion Nuclear Power Station, Units 1 and 2, and the RT_{NDT} value is −26 °F for WF–70 weld metal. The exemption approval for the Zion station also stated that other procedures for determination of RT_{NDT} may serve as acceptable alternatives to NB–2331 contingent on staff review and approval. The staff acceptance of the alternative procedure in that evaluation was based, in part, on the analysis of a significant amount of fracture toughness data for the WF–70 weld metal. Therefore, since TMI–1 used the same weld metal as Zion and the data considered for the Zion exemption resulted in a more representative RT_{NDT} value, the TMI–1 use of the master curve approach for WF–70 weld metal is acceptable.

In summary, the underlying purpose of 10 CFR 50.61 is to ensure that the RPV is adequately protected from PTS. Application of the master curve approach to determine the unirradiated RT_{NDT} value for weld metal WF–70 is acceptable because the master curve approach is more appropriate for material with low upper-shelf behavior like WF–70 weld metal.

Therefore, pursuant to 10 CFR 50.12(a)(2)(ii), application of the master curve approach to determine the unirradiated RT_{NDT} value for weld metal WF–70 would continue to achieve the underlying purpose of the rule, and application of the definition of $RT_{NDT(U)}$ in 10 CFR 50.61(a)(5) in these circumstances is not necessary to achieve that purpose.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or common defense and security, and are, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants AmerGen Energy Company, LLC exemptions from the requirements of 10 CFR part 50, Appendix G, and 10 CFR part 50, § 50.61(a)(5), for TMI–1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 45874).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of August 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–22514 Filed 9–6–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Calvert Cliffs Nuclear Power Plant; Notice of Docketing of the Materials License SNM–2505; Amendment Application for the Calvert Cliffs Independent Spent Fuel Storage Installation

By letter dated July 26, 2001, Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP), submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting an amendment of the Calvert Cliffs independent spent fuel storage installation (ISFSI) license (SNM–2505) for the ISFSI located in Calvert County, Maryland. CCNPP is requesting Commission approval to amend SNM–2505 to reflect revised fuel assembly integrity analysis as described in the Safety Analysis Report. CCNPP proposed changes to Technical Specification 2.3 to remove the 15-inch drop height limit and require inspection after any drop of a dry shielded canister. CCNPP also proposed a change to Technical Specification 6.3 to revise the reference to a semi-annual environmental reporting period to be consistent with the annual reporting requirements of 10 CFR 50.36a(2).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–8 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/nrc/adams/index.html.* If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of August 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–22515 Filed 9–6–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, et al., Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 241 and 121 to Facility Operating License Nos. DPR–66 and NPF–73, respectively, issued to FirstEnergy Nuclear Operating Company, et al. (the licensee), which revised the Technical Specifications (TSs) and authorized revisions to the Updated Final Safety Analysis Report (UFSAR) for operation of Beaver Valley Power Station, Unit Nos. 1 and 2, located in Shippingport, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment authorized revisions to the BVPS–1 and 2 UFSAR design-basis fuel handling accident (FHA) dose consequence analyses. The amendment also revised the BVPS–1 and 2 TSs associated with the requirements for handling irradiated fuel assemblies in the reactor containment and fuel building and the TS requirements associated with ensuring that UFSAR safety analysis assumptions are met for a postulated FHA. The term ''recently irradiated'' fuel is defined in the applicable TS Bases as ''fuel that has occupied part of a critical reactor core within the previous 100 hours.'' The purpose of the addition of the term ''recently irradiated'' throughout the TSs is to establish a point where operability of those systems typically used to mitigate the consequences of an FHA is no longer required to meet the

radiation exposure limits of 10 CFR 50.67. This amendment revises the TSs to eliminate TS controls over the integrity of the fuel building and the reactor containment building and the operability of the associated building's ventilation/filtration systems after the decay period of 100 hours.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on June 4, 2001 (66 FR 30026). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 19, 2001 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML010810433), as supplemented by letters dated July 6 (ADAMS Accession No. ML011980423), August 8 (ADAMS Accession No. ML012260302), and August 23, 2001 (ADAMS Accession No. ML012420089), (2) Amendment Nos. 241and 121 to License Nos. DPR–66 and NPF–73, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment, dated August 17, 2001 (ADAMS Accession No. ML012210436). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of August 2001.

For the Nuclear Regulatory Commission.

Lawrence J. Burkhart,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–22517 Filed 9–6–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1108 (which should be mentioned in all correspondence concerning this draft guide), is ''Combining Modal Responses and Spatial Components in Seismic Response Analysis.'' This draft guide is a proposed Revision 2 of Regulatory Guide 1.92, and it is being revised to improve the guidance to licensees and applicants on methods acceptable to the NRC staff for combining modal responses and spatial components in seismic response analysis in the design and evaluation of nuclear power plant structures, systems, and components important to safety.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 22, 2001.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. O.P. Gormley at (301) 415–6793; e-mail *OPG@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of August 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 01–22516 Filed 9–6–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review, Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rules 17Ad–6 and 17Ad–7, SEC File No. 270–151, OMB Control No. 3235–0291.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

(''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rules 17Ad–6 and 17Ad–7: Recordkeeping requirements for transfer agents

Rule 17Ad–6 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et. seq.*) requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquires and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et. seq.*) requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 1,000 registered transfer agents will spend a total of 500,000 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $25,000,000.

The retention period for the recordkeeping requirements under Rule 17Ad–6 is six months to one year. In addition, such records must be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document. The recordkeeping requirements under Rules 17Ad–6 and 17Ad–7 are mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 29, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22507 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Moog Inc, Common Stock, Class A and B, $1.00 par Value) File No. 1–5219

August 31, 2001.

Moog Inc., a New York Corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A and B Common Stock, $1.00 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On June 16, 2001, the Board of Directors of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the Amex and list it on the New York Stock Exchange, Inc. (''NYSE''). In its application, the Issuer states that trading in the Security on the Amex will cease on August 24, 2001, and trading in the Security is expected to begin on the NYSE at the opening of business on August 27, 2001. In making the decision to withdraw the Security from listing on the Amex, the Issuer considered the potential increased institutional interest and benefit to its capital structure.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of New York, in which it is incorporated and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and shall have no effect upon its listing on the NYSE or its registration under Section 12(b) of the Act.[3]

Any interested person may, on or before September 20, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–22509 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25147]

Notice of Applications for Deregistriation Under Section 8(f) of the Investment Company Act of 1940

August 31, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0192 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested person may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Minn Shares Inc. [File No. 811–7744]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has remaining assets of approximately $492,277, consisting primarily of liquid securities. Applicant will appoint a liquidating agent, who will liquidate the assets over a period of approximately three years and distribute the proceeds pro rata to applicant's shareholders. Distributions will be made to shareholders after payment of approximately $172,596 of outstanding debts and liquidation expenses. A special meeting of shareholders is scheduled for September 7, 2001 to approve applicant's liquidation. Applicant currently is not a party to any litigation or administration proceeding. Lawrence P. Grady, applicant's president and largest shareholder, is a party to an SEC enforcement action arising out of the SEC's examination of applicant. The application is submitted in connection with that proceeding.

Filing Dates: The application was filed on August 3, 2001. Applicant has agreed to file an amended application during the notice period, the substance of which is reflected in this notice.

Applicant's Address: 520 Diamond Lake Lane, Minneapolis, MN 55419.

Mutual Selection Fund, Inc. [File No. 811–2300]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 2, 2001, applicant transferred its assets to Pearl Total Return Fund, a series of Pearl Mutual Funds, based on net asset value. Expenses of $39,276 incurred in connection with the reorganization were paid by Pearl Management Company, applicant's investment adviser.

Filing Dates: The application was filed on August 13, 2001, and amended on August 27, 2001.

Applicant's Address: 2610 Park Ave., PO Box 209, Muscatine, IA 52761.

Credit Suisse Warburg Pincus Small Company Value II Fund, Inc. [File No. 811–7375]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2001, applicant transferred its assets to Credit Suisse Warburg Pincus Small Company Value Fund, a series of Credit Suisse Warburg Pincus Capital Funds, based on net asset value. Expenses of $122,129 incurred in connection with the reorganization were paid by applicant's investment adviser, Credit Suisse Asset Management, LLC.

Filing Date: The application was filed on August 16, 2001.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Zero Gravity Funds [File No. 811–9787]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 30, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $10,950 incurred in connection with the liquidation will be paid by Zero Gravity Capital Management LLC, applicant's investment adviser.

Filing Date: The application was filed on August 6, 2001.

Applicant's Address: 400 Montgomery Street, 3rd Floor, San Francisco, CA 94104.

Dreyfus Global Bond Fund, Inc. [File No. 811–7085]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 2000, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by applicant's investment adviser, The Dreyfus Corporation.

Filing Date: The application was filed on July 31, 2001.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Avenue, New York, NY 10166.

Allegiance Investment Trust-American Value Fund [File No. 811–9185]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 7, 2000, applicant transferred its assets to Van Deventer & Hoch American Value Fund, a series of Advisors Series Trust, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on August 3, 2001.

Applicant's Address: 800 North Brand Boulevard, Suite 300, Glendale, CA 91203.

TD Waterhouse Family of Funds [File No. 811–9543]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on July 12, 2001, and amended on August 17, 2001.

Applicant's Address: P.O. Box 100, Toronto Dominion Centre, 26th Floor, Toronto Dominion Tower, 55 King Street West, Toronto, Ontario, Canada M5K 1A2.

Virtus Funds [File No. 811–6158]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 27, 1998, each series of applicant transferred its assets to corresponding portfolios of Evergreen Municipal Trust, Evergreen Fixed Income Trust, Evergreen Money Market Trust and Evergreen Equity Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on August 8, 2001.

Applicant's Address: Federated Investors Tower, Pittsburgh, PA 15222–3779.

SG Cowen Standby Tax-Exempt Reserve Fund, Inc. [File No. 811–4344]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 31, 2001, all shareholders of applicant had voluntarily redeemed their shares at net asset value, except SG Cowen Asset Management, Inc. (''SGCAM''), applicant's investment adviser. SGCAM plans to redeem its shares in connection with the winding up of applicant's affairs. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on July 25, 2001, and amended on August 14, 2001.

Applicant's Address: 560 Lexington Avenue, New York, NY 10022.

MuniHoldings California Insured Fund V, Inc. [File No. 811–9313]

Summary: Applicant, a closed-end management investment company,

seeks an order declaring that it has ceased to be an investment company. On March 5, 2001, applicant transferred its assets to MuniHoldings California Insured Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of newly-issued shares of an existing series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $261,031 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on July 19, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

MuniHoldings Florida Insured Fund V [File No. 811–9331]

Summary: Applicant, a closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 5, 2001, applicant transferred its assets to MuniHoldings Florida Insured Fund based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of newly-issued shares of an existing series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $276,084 incurred in connection with the reorganization were paid by applicant and Fund Asset Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on July 19, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

MuniHoldings New Jersey Insured Fund IV, Inc. [File No. 811–9315]

Summary: Applicant, a closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 5, 2001, applicant transferred its assets to MuniHoldings New Jersey Insured Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $258,468 incurred in connection with the reorganization were paid by applicant and Fund Asset Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on July 19, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

MuniHoldings New York Insured Fund IV, Inc. [File No. 811–9317]

Summary: Applicant, a closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 5, 2001, applicant transferred its assets to MuniHoldings New York Insured Fund, Inc. on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of newly-issued shares of an existing series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $216,087 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on July 19, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Credit Suisse Institutional Strategic Global Fixed Income Fund, Inc. [File No. 811–8931]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 21, 2000, all shareholders of applicant had voluntarily redeemed their shares at net asset value. Expenses of approximately $2,500 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Dates: The application was filed on February 22, 2001, and amended on June 8, 2001, and August 9, 2001.

Applicant's Address: 466 Lexington Avenue, New York, NY 10017.

GTBD Fund, L.L.C. (Deauville Europe Fund, L.L.C.) [File No. 811–10225]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on June 15, 2001, and amended on August 16, 2001, and August 21, 2001.

Applicant's Address: One World Financial Center, 31st Floor, 200 Liberty St., New York, NY 10281.

Multistate Tax Exempt Unit Trust [File No. 811–2774]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. By April 9, 2001, each series of applicant had distributed its assets to unitholders based on net asset value. As of August 24, 2001, applicant had 400 unitholders who have not presented their trust certificates for redemption. Applicant's trustee, the Bank of New York, is holding any unclaimed funds, which will escheat to each unitholder's state of residence after the applicable holding period. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on May 18, 2001, and amended on August 24, 2001.

Applicant's Address: 90 State House Square, Hartford, CT 06103.

NSB Asset Fund, Inc. [File No. 811–10031]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as an unregistered real estate investment trust in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on July 3, 2001, and amended on August 27, 2001.

Applicant's Address: One South Main, Suite 1380, Salt Lake City, UT 84111.

Morgan Stanley Dean Witter World Wide Income Trust [File No. 811–5744]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2001, applicant transferred its assets to Morgan Stanley Diversified Income Trust based on net asset value. Expenses of $137,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on July 23, 2001.

Applicant's Address: Two World Trade Center, 70th Floor, New York, NY 10048.

A.G. Series Trust [File No. 811–03050]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. At the time of filing, Applicant had distributed all of its shares at net asset value to its shareholders in connection with Applicant's liquidation. There were no expenses incurred in connection with the liquidation.

Filing Dates: The application was filed on June 7, 2001, and amended on July 19, 2001.

Applicant's Address: 2929 Allen Parkway, Houston, Texas 77019.

Templeton Variable Annuity Fund [File No. 811–5024]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 8, 1998, applicant transferred its assets to Templeton Stock Fund based on net asset value. Expenses of $20,946 incurred in connection with the reorganization were paid by Templeton Variable Annuity Fund and Templeton Stock Fund.

Filing Date: The application was filed on June 20, 2001.

Applicant's Address: 500 East Broward Boulevard, Suite 2100, Fort Lauderdale, Florida 33394–3091.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–22508 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44483A; File No. SR–Amex–2001–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to the Listing and Trading of Institutional Index Notes; Correction

August 30, 2001.

Release No. 34–44483, issued on June 27, 2001, and published in the **Federal Register** on July 6, 2001,[1] contained an error in Part IV.[2] The term ''Industrial Holdings'' was mistakenly used. The correct term is ''Institutional Holdings.''

Accordingly, the term ''Institutional Holdings'' should replace the term ''Industrial Holdings'' in Part IV of the Release.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22511 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* 66 FR 35677.

[2] *See* 66 FR 35677, 35680.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44739A; File No. SR–ISE–00–22]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Nos. 1 and 2 to the Proposed Rule Change Relating to Market Maker Financial Requirements; Correction

August 30, 2001.

In Release No. 34–44739, issued on August 22, 2001 (FR Document 01–21739 beginning on page 45713 for Wednesday, August 29, 2001), the conclusion inadvertently referred to the proposed rule change as SR–NYSE–00–22. The conclusion should read that the proposed rule change (SR–ISE–00–22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22513 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44734A; File No. SR–NASD–2001–42]

Self-Regulatory Organizations; the National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program; Correction

August 30, 2001.

In Release No. 34–44734, issued on August 22, 2001 (FR Document 01–21651 beginning on page 45347 for Tuesday, August 28, 2001), the title inadvertently omitted the name of the self-regulatory organization. The title is corrected to read as set forth above. Additionally, the release contained an inaccurate expiration date for the pilot program. The pilot program is extended for an additional six months, through December 31, 2001, not through September 1, 2001.

[1] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22512 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44752; File No. SR–NYSE–2001–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Administer NYSE Rule 91.10 Pursuant to the NYSE's Minor Rule Violation Plan

August 29, 2001.

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 August 21, 2001, the New York Stock Exchange, Inc. (''NYSE'' 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 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 amend the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' for imposition of fines for minor rule violations of rules and/or policies (''List'') by adding to the List the failure to comply with the provisions of NYSE Rule 91.10, Taking or Supplying Securities Named in Order. The Exchange believes it is appropriate to make the failure to comply with the provisions of NYSE Rule 91.10 subject to the possible imposition of a fine under NYSE Rule 476A procedures. The text of the proposed rule change is available at the NYSE 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

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the NYSE Rule 476A procedure is to provide for a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. NYSE Rule 476A preserves due process rights, identifies those rule violations that may be the subject of summary fines, and includes a schedule of fines.

In SR–NYSE–84–27,[3] which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of NYSE Rule 476A as experience with it was gained.

The Exchange proposes to add to the List the failure by specialists or specialist organizations to comply with the provisions of NYSE Rule 91.10. That rule requires that whenever a specialist has elected to take or supply for his or her account the securities named in an order entrusted to the specialist, he or she must summon a representative of the firm that entered the order to confirm, in written format, the acceptance or rejection of such transaction.

The purpose of the proposed change to the List is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rule. The Exchange believes failure to comply with the requirements of the rule should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*e.g.,* the issuance of a fine rather than an admonition letter) to a minor violation of NYSE Rule 91.10.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rule and all others on the List. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under NYSE Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under NYSE Rule 476.

2. Statutory Basis

The Exchange believes the proposal will advance the objectives of Section 6(b)(6)[4] of the Act in that it will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. The NYSE believes the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)[5] and 6(d)(1)[6] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to appropriate and publishes its reasons for so findings or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 NYSE. All submissions should refer to file number SR–NYSE–2001–28 and should be submitted by September 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–22456 Filed 9–6–01; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (approving SR–NYSE–84–27).

[4] 15 U.S.C. 78f(b)(6).

[5] 15 U.S.C. 78f(b)(7).

[6] 15 U.S.C. 78f(d)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44757; File No. SR–NYSE–2001–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading CP HOLDRS on the Exchange

August 30, 2001.

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 August 30, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 NYSE proposes to list under Paragraph 703.19 of the Listed Company Manual (the ''Manual'') [3] CP HOLDRS issued pursuant to the deposit agreement among Merrill Lynch Canada Inc., as initial depositor and coordinator (''Merrill Lynch''), BNY Trust Company of Canada, as depositary, the owners and beneficial owners from time to time of CP HOLDES, and depositors from time to time of the underlying securities represented by CP HOLDRS. CP HOLDRS are depositary receipts initially representing ownership in deposited common back stock of Canadian Pacific Limited (''CP'') and subsequently representing ownership of the shares of common stock of CP's successor companies that are expected to result from CP's plan of reorganization.[4] The value of CP HOLDRS directly relates to the value of the underlying securities.[5]

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 III 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

Under Paragraph 703.19 of the Manual, the Exchange may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[6] The Exchange is now proposing to list CP HOLDRS, as below described, pursuant to Paragraph 703.19 of the Manual.

Description of CP HOLDRS. CP HOLDRS are depositary receipts designed by Merrill Lynch to provide current holders of shares of common stock issued by CP (''CP Shares'') with a single exchange traded instrument representing shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization.[7] CP HOLDRS have been designed without regard for the value, price performance, volatility or investment merit of CP historically or the successor companies prospectively.

CP HOLDRS will be issued by the CP HOLDRS Deposit Facility created by the deposit agreement among BNY Trust Company of Canada, as depositary, Merrill Lynch Canada Inc., as initial depositor and coordinator, the owners and beneficial owners from time to time of CP HOLDRS, and depositors from time to time of underlying securities. The deposit agreement will govern the terms of CP HOLDRS.[8]

Merrill Lynch, as initial depositor, will be deemed the ''issuer'' of CP HOLDRS for purposes of the Securities Act of 1933, as amended, and the Act. The depositary will deliver CP HOLDRS issued by the CP HOLDRS Deposit Facility created by the deposit agreement. The CP HOLDRS Deposit Facility created by the deposit agreement is not a registered investment company under the Investment Company Act of 1940 (the ''1940 Act'').

Under the deposit agreement, its plan of reorganization, CP HOLDRS will represent shares of the successor companies resulting from the reorganization of CP and received in exchange for CP Shares.

CP HOLDRS will be delivered by the depositary to depositing holders of CP Shares pursuant to the deposit agreement. Prior to the reorganization of CP, holders of CP Shares must deposit their CP Shares in order to receive CP HOLDRS. One CP HOLDRS will be issued for each CP Share deposited. The depositary will deliver additional CP HOLDRS on a continuous basis to depositing holders of CP Shares (or, following the completion of CP's reorganization, to depositors of the underlying securities).

As discussed more fully herein in ''*Cancellation of CP HOLDRS,*'' the deposit agreement entities holders of CP HOLDRS to surrender CP HOLDRS to the depository and receive the underlying securities represented by those CP HOLDRS. Although a beneficial owner of CP Shares will not receive cash in lieu of fractional interests of the successor companies at the time of the reorganization of CP, when a beneficial owner of CP HOLDRS surrenders his or her CP HOLDRS to receive the underlying securities, the depositary will deliver cash to the holder in lieu of fractional interests in the underlying securities based on the most recent closing price of the security (*i.e.,* the closing price for the common stock of the underlying security on the trading day before the holder surrenders his or her CP HOLDRS). The depositary will reflect that transaction on the books and records of the CP HOLDRS Deposit Facility accordingly. A holder of CP HOLDRS will not have to wait for the depositary to sell the aggregate of such fractions and distribute the proceeds to such holder, but will receive cash in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Footnote 80 of the Securities Exchange Act Release No. 40761 (December 8, 1998) notes that an ''other security'' listing standard (such as Paragraph 703.19) is not intended to accommodate the listing of securities that raise significant regulatory issues without a specific separate filing with the Commission pursuant to Rule 19b–4 under the Act.

[4] CP has announced a plan to split into five separate public successor companies—PanCanadian Petroleum Limited, Canadian Pacific Railway Company, Fording Inc., CP it is anticipated that current holders of CP Shares will hold the equity securities of each of these successor companies.

[5] The shares of common stock of the successor companies that are held under the deposit agreement at any point in time (together with other securities that may be represented by CP HOLDRS in the future) are collectively referred herein as the ''underlying securities.''

[6] *See* Securities Exchange Act Release No. 28217 (July 18, 1990) (''July 18, 1990 Release''), 55 FR 30056 (July 24, 1990); Securities Exchange Act Release No. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991).

[7] For the detailed description of CP HOLDRS, *see* the registration statement on Form F–1 filed by Merrill Lynch with the Commission (File No. 333–63924) (the ''Registration Statement'').

[8] For the description of the deposit agreement, *see* the Registration Statement.

lieu of fractional interests at the time such holder surrenders his or her CP HOLDRS.

CP HOLDRS will present an investor's undivided beneficial ownership of the underlying securities. According to the Registration Statement, owners of CP HOLDRS will have the same rights and privileges as they would have if they owned the underlying securities outside of CP HOLDRS. These include the right to instruct the depositary to vote the underlying securities, to receive any dividends and other distribution on the underlying securities that are declared and paid to the depositary by an issuer of an underlying security, the right to receive reports and other information required to be distributed by the issuer in respect of the underlying securities, the right to pledge CP HOLDRS and the right to surrender CP HOLDRS to receive the underlying securities. Investors will retain the right to receive any reports and communications that the issuers of underlying securities are required to send to beneficial owners of their securities. As such, investors will receive such reports and communications in the same manner as if such investors beneficially owned their underlying securities outside of CP HOLDRS from the broker through which they hold their CP HOLDRS. These reports currently include annual reports, audited financial statements (including management's discussion and analysis of financial condition and results of operations) and management proxy circulars.

Stock splits and reverse splits of any of the underlying securities will not affect the weighings of the underlying securities. Rather, the share amounts will be adjusted to reflect such splits so that there is no change in weighting solely due to a split. Weighings will change with the relative price changes of the underlying securities. Securities will not be added other than in accordance with stock distributions or reorganizations events outlined in the prospectus. As a result, if an underlying security distributes shares of stock or if a security is acquired by another company, the new shares will remain in CP HOLDRS so long as they are registered under Section 12 of the Exchange Act, are issued by a reporting issuer under Canadian securities laws and are listed for trading on a national securities exchange in Canada and on either a national securities exchange in the United States or the NASDAQ National Market System. (*See* ''*Reconstitution Events*'' below).

The deposit agreement entitles investors to receive, subject to certain limitations and net of any fees of the depositary, any distributions of cash (including dividends), securities or property made with respect to the underlying securities. The depositary will not distribute a fraction of one cent but will round to the nearest whole cent before distribution. Distributions will be made by the depositary as soon as is practicable following receipt by the depositary of such distributions. There may be a delay (which is expected not to exceed one day) between the time any cash or other distribution is received by the depositary with respect to the underlying securities and the time such cash or other distributions are distributed to holders of CP HOLDRS due to the need for the depositary to process the flow of funds. Events beyond the control of the depositary, such as computer failures and other disruptions of banking systems generally may also result in a delay in distributions to holders of CP HOLDRS. Holders of CP HOLDRS will not be entitled to any interest on any distribution by reason of any delay in distribution by the depositary. If any tax or other governmental charge becomes due with respect to CP HOLDRS or any underlying securities, holders of CP HOLDRS will be responsible for paying that tax or governmental charge. Holders of CP HOLDRS may elect to receive dividends with respect to underlying securities in either Canadian or U.S. dollars by following the procedures established by the broker through which they hold their CP HOLDRS.

The value of CP HOLDRS directly relates to the value of the underlying securities. Although it is possible that CP HOLDRS may trade at either a discount or a premium to the aggregate value of the underlying securities, historically, HOLDRS products currently listed on the American Stock Exchange LLC and the Exchange have traded at values reflecting the aggregate value of the underlying securities represented by CP HOLDRS. Merrill Lynch believes that this trading equivalency results from the ability to cancel HOLDRS products and receive the underlying securities at any time. As such, arbitrageurs can quickly move between HOLDRS and the underlying securities thereby limiting any such premiums or discounts. Based on the foregoing, the Exchange believes that it is reasonable to expect that CP HOLDRS will not trade at a material discount or premium to the underlying securities. The Exchange believes that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.,* CP HOLDRS and the underlying securities)—increases the efficiency of the markets and should promote correlative pricing between CP HOLDRS and the underlying securities.

CP HOLDRS will be issued in ''book-entry only'' form and will be represented by one or more global certificates registered in the name of CDS & CO., the nominee of The Canadian Depositary for Securities Limited (''CDS''), and deposited with CDS. U.S. holders of CP HOLDRS will hold their interests in the global certificates indirectly through the Depository Trust Company (''DTC''). DTC is, in turn, a participant in CDS. All interests of Canadian and U.S. holders of CP HOLDRS in the global certificates, including those held through DTC, will be subject to the procedures and requirements of CDS. Those interests held through DTC may also be subject to the procedures and requirements of DTC. Investors will not be able to hold CP HOLDRS in individually registered positions, but rather can only hold these positions through a broker-dealer in street name, except as otherwise required by applicable law or if CDS or DTC advises the depositary that it is no longer willing or able to act as a depositary for CP HOLDRS or the depositary is unable to find a successor.

CP HOLDRS will be issued to investors in certificated form only if: (i) That action is required under applicable law; (ii) CDS or DTC advises BNY Trust Company of Canada or its successor that either CDS or DTC is no longer willing or able to properly discharge its responsibilities as depositary with respect to CP HOLDRS and BNY Trust Company of Canada or its successor is unable to locate a qualified successor; or (iii) CDS ceases to be a clearing agency or otherwise ceases to be eligible to be a depositary and BNY Trust Company of Canada or its successor is unable to locate a qualified successor.

Investors wishing to receive registered shares may surrender their CP HOLDRS at any time (and pay any applicable fees) and receive the underlying securities represented by their CP HOLDRS, and then follow the procedures established by the issuers of each of the underlying securities to become the registered owner of those securities.

Reconstitution Events. The deposit agreement provides for distribution of the underlying securities as promptly as possible to investors in CP HOLDRS in the circumstances referred to in the Registration Statement as ''reconstitution events.'' The reconstitution events will occur under the following circumstances:

(1) If any class of underlying securities ceases to be outstanding as a result of, or is surrendered by the depositary in connection with, a merger, consolidation or other corporate combination of its issuer, the depositary will distribute any securities received as consideration from the acquiring company unless the securities received are registered under Section 12 of the Act, are issued by a reporting issuer under Canadian securities laws, and are listed for trading on a national securities exchange in Canada and on either a national securities exchange in the United States or the NASDAQ National Market System. In that case, the securities received will be treated as additional underlying securities and shall be added to the classes and quantities of securities that must be deposited for issuance of CP HOLDRS.

(2) If any class of underlying securities is delisted from trading on its primary exchange or market in either the United States or Canada and is not listed for trading, as the case may be, on another national securities exchange in Canada or on either a national securities exchange in the United States or the NASDAQ National Market System, within five business days from the date of such delisting, the depositary will, to the extent lawful and feasible, distribute those underlying securities to the owners in proportion to their ownership of CP HOLDRS.

(3) If any class of underlying securities is no longer registered under Section 12 of the Act or if an issuer of underlying securities is no longer a reporting issuer under the Canadian securities laws, the depositary will, to the extent lawful and practicable, distribute the underlying securities of the company to the owners.

(4) If the Commission determines that an issuer of an underlying security is an investment company under the 1940 Act, and the depositary has actual knowledge of such Commission determination, then the depositary will, to the extent lawful and practicable, distribute the underlying securities of such issuer to the owners in proportion to their ownership of CP HOLDRS.

(5) If there is any other change in nominal value, change in par value, split-up, consolidation or any other reclassification of any underlying securities, or any recapitalization, reorganization, merger or consolidation or sale of assets affecting the issuer of any underlying securities in connection with which the depositary receives securities that are not registered under Section 12 of the Act, are not issued by a reporting issuer under Canadian securities laws and are not listed on a national securities exchange in Canada and either a national securities exchange in the United States or through the NASDAQ National Market in connection with such event, the depositary will, to the extent lawful and practicable, distribute any securities so received by the depositary to the owners in proportion to their ownership of CP HOLDRS.

Cancellation of CP HOLDRS. The deposit agreement entitles holders of CP HOLDRS to surrender CP HOLDRS to the depositary and receive the underlying securities represented by those CP HOLDRS. The depositary will deliver the underlying securities to surrendering owners of CP HOLDRS as promptly as practicable. Merrill Lynch expects, absent unforeseeable difficulties or difficulties outside of the depositary's control, that the depositary will delivery the underlying securities to surrendering owners of CP HOLDRS within one business day of the business day they surrender their CP HOLDRS. In addition, if any fractional interests in underyling securities are represented by CP HOLDRS at the time of the surrender of CP HOLDRS, the depositary will deliver cash in lieu of such fractional interests, as described herein under ''*Description of CP HOLDRS.*''

Withdrawal of underlying securities upon surrender of CP HOLDRS is also subject to the payment of applicable fees (including the payment to the depository of a cancellation fee of up to $0.10 per CP HOLDR surrendered), taxes or governmental charges, if any. Cancellation fees will be rounded up to the nearest 100 CP HOLDRS cancelled.

Termination of the Depository. The depositary will terminate the deposit agreement by mailing notice of termination to the owners of CP HOLDRS if: (i) The depositary is notified that CP HOLDRS are no longer listed on a national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System and CP HOLDRS are not approved for listing on another national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System within five business days of their delisting; (ii) 60 days have passed after the depositary has delivered to Merrill Lynch a written notice of its election to resign and no successor has been appropriately appointed; or (iii) 75% of the owners of outstanding CP HOLDRS (other than Merrill Lynch or its affiliates) notify the depositary that they elect to terminate the deposit agreement.

Registration under the Act. To be included in CP HOLDRS, the underlying securities must always be registered under Section 12 of the Act; must be issued by a reporting issuer under Canadian securities laws; and each underlying security must be listed for trading on a national securities exchange in Canada and either a national securities exchange in the United States or the NASDAQ National Market System.

CP Shares are currently listed on the Exchange and The Toronto Stock Exchange (the ''TSE'') under the symbol ''CP.''

Full and complete information regarding CP HOLDRS, including risks associated with investing in CP HOLDRS, is provided in the Registration Statement.

Criteria for Initial and Continued Listing. CP HOLDRS will be subject to the Exchange's listing criteria for equities under Paragraph 703.19 of the Manual.

Merrill Lynch represented to the Exchange that CP HOLDRS will comply with the listing standards for equities set forth in Paragraph 703.19 of the Manual. Specifically:

(i) There will be one million CP HOLDRS outstanding;

(ii) There will be at least 400 holders of CP HOLDRS;

(iii) CP HOLDRS will have a minimum life of one year; and

(iv) CP HOLDRS will have a minimum market value of at least U.S. $4 million.

CP HOLDRS will be subject to the Exchange's continued listing criteria for specialized securities pursuant to Paragraph 802.01D of the Manual. Accordingly, the Exchange will consider suspending and delisting CP HOLDRS from trading under the following circumstances:

(i) If the number of publicly-held CP HOLDRS is less than 100,000;

(ii) If the number of holders of CP HOLDRS is less than 100;

(iii) If CP HOLDRS will have the aggregate market value of less than U.S. $1 million;

(iv) The issuer of any underlying security is no longer subject to the reporting obligations of the Exchange Act; or

(v) If any underlying security no longer trades in a market in which there is last sale reporting.

As noted above, each underlying security will be registered under Section 12 of the Act. Each of the successor companies is expected to be listed on the Exchange and the TSE. As such, information regarding the trading history of these companies will be

available to the same extent as any other equity security that is listed on a national securities exchange and registered under Section 12 of the Act. Going forward, trading history on CP HOLDRS will be available on a similar basis as any other exchange-traded security (*e.g.,* Bloomberg, Reuters, ILX).

Because the listing of CP HOLDRS is expected to precede listing of the underlying securities, it is impossible to provide historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security. However, information is available in respect of CP Shares (which, as described above, will initially be represented by CP HOLDRS) indicating that there is a broad and liquid market for CP Shares.[9] In addition, PanCanadian Petroleum Limited, one of the successor companies to CP, currently is listed on the TSE under the symbol ''PCP.'' Information available from the TSE indicates that there is also a broad and liquid market for PanCanadian Petroleum Limited.[10] Based on this information, the Exchange anticipates that each of the underlying securities will have an average daily trading volume and U.S. dollar value of shares traded adequate to support listing and trading in CP HOLDRS.

The Exchange will, prior to trading CP HOLDRS, distribute a circular to the membership, as described herein under ''*Disclosure and Dissemination of Information.*''

Exchange Rules Applicable to Trading of CP HOLDRS. Since CP HOLDRS will be deemed equity securities for the purpose of Paragraph 703.19 of the Manual, the NYSE's existing equity floor trading rules will apply to the trading of CP HOLDRS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading CP HOLDRS.[11] Second, CP HOLDRS will be subject to the equity margin rules of the Exchange. Third, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in CP HOLDRS. Fourth, the Exchange's surveillance procedures for CP HOLDRS will be similar to those used for investment company units and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

Disclosure and Dissemination of Information. Merrill Lynch will deliver a prospectus to each holder of CP Shares in connection with the solicitation for deposits of CP Shares in connection with the initial issuance of CP HOLDRS. After the initial issuance of CP HOLDRS, the depositary will deliver a prospectus, and any applicable supplements, to depositors of CP Shares or the shares of the successor companies upon such depositor's surrender of the requisite amount of CP Shares or shares of the successor companies to create CP HOLDRS. The Exchange will note in its circular to membership (as described below) that the Commission staff takes the position that under the Securities Act of 1933 and rules thereunder,[12] member organizations that acquire CP HOLDRS from the depositary for resale to customers must deliver a prospectus to such customers.

Pursuant to Paragraph 703.19, the Exchange will, prior to trading CP HOLDRS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) with handling transactions in CP HOLDRS and highlighting the unique characteristics and risks of CP HOLDRS. In addition, the circular will advise members of Exchange about policies relating to trading halts in CP HOLDRS. Specifically, the circular will inform that the Exchange may consider factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Based on the foregoing, the Exchange finds it appropriate to approve CP HOLDRS for listing and trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [13] of the Act, in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consisted 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 that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–35 and should be submitted by September 28, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change in consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[15] Specifically, the Commission finds that the proposal to list and trade CP HOLDRS will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should

[9] During the sixty-day trading period of June 4, 2001 to August 27, 2001, the average daily trading volume of CP Shares was 767,832 shares (on the NYSE) and 1,393,024 shares (on the TSE), while the average daily U.S. dollar value of CP Shares traded was U.S. $29,661,350.16 (on the NYSE) and U.S. $53,911,421.82 (on the TSE).

[10] During the sixty-day trading period of June 1, 2001 to August 27, 2001, the average daily trading volume on the TSE of PCP was 609,249 shares, while the average daily U.s. dollar value of PCP traded was U.S. $17,688,326.17.

[11] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[12] *See* 15 U.S.C. 77e; 17 CFR 230.174.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

advance the public interest by providing investors with increased flexibility in satisfying their investment needs by providing current holders of CP Shares with a single exchange traded instrument representing shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization, and allowing subsequent investors to purchase and sell such instruments in the secondary market. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[16]

The Commission believes that CP HOLDRS will provide investors with an alternative to trading, on an individual basis, shares of common stock of the five successor companies that are expected to result from CP's announced plan of reorganization, and will give investors the ability to trade a single exchange traded instrument representing these companies' common stock continuously throughout the business day in secondary market transactions at negotiated prices. CP HOLDRS will allow investors to: (i) Respond quickly to changes in the overall securities markets generally and for the industry represented by the underlying securities; (ii) trade, at a price disseminated on a continuous basis, a single security representing five securities that the investor owns beneficially; (iii) engage in hedging strategies similar to those used by institutional investors; (iv) reduce transaction costs for trading a portfolio of securities; and (v) retain beneficial ownership of the securities underlying the CP HOLDR.

Although CP HOLDRS are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived from and based upon the value of the underlying securities. Accordingly, the level of risk involved in the purchase or sale of CP HOLDRS is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for CP HOLDRS is based upon the aggregate value of the five underlying securities represented by CP HOLDRS. Nevertheless, the Commission believes that the unique nature of CP HOLDRS, related to, among other things, the lack of historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security, raises, certain product design, disclosure, trading, and other issues that must be addressed.

B. Characteristics of CP HOLDRS

The Exchange has represented that each underlying security will be registered under Section 12 of the Exchange Act. Each of the successor companies is expected to be listed on the Exchange and the TSE. Consequently, information regarding the trading history of these companies will be available to the same extent as any other equity security that is listed on a national securities exchange and registered under Section 12 of the Exchange Act and, going forward, trading history on CP HOLDRS will be available on a similar basis as any other exchange-traded security (*e.g.,* Bloomberg, Reuters, ILX).

Additionally, the Exchange has represented and the Commission notes that, because the listing of CP HOLDRS is expected to precede listing of the underlying securities, it is impossible to provide historical information relating to average daily trading volume or the average U.S. dollar value of trading in each underlying security. The available information regarding CP Shares (which is the only security that will initially be represented by CP HOLDRS) shows that there is a broad and liquid market for CP Shares.[17] In addition, the Exchange has highlighted the breadth and liquidity of the market for Pan Canadian Petroleum Limited, one of the successor companies to CP, currently is listed on the TSE under the symbol ''PCP.'' [18] Based on this information and the Exchange's assertion that it anticipates that each of the underlying securities will have an average daily trading volume and U.S. dollar value of shares traded adequate to support listing and trading in CP HOLDRS, the Commission believes that this information about the liquidity of the CP Shares market is a sufficient proxy for the expected liquidity of the future market for CP HOLDRS.

As represented by the Exchange above, CP HOLDRS will represent an investor's undivided beneficial ownership of the underlying securities. Owners of CP HOLDRS will have the same rights and privileges as they would have if they owned the underlying securities outside of CP HOLDRS. These include the right to instruct the depositary to vote the underlying securities, to receive any dividends and other distributions on the underlying securities that are declared and paid to the depositary by an issuer of an underlying security, the right to receive reports and other information distributed by the issuer in respect of the underlying securities, the right to pledge CP HOLDRS and the right to surrender CP HOLDRS to receive the underlying securities. As beneficial holders of the underlying securities, investors will receive reports and communications, including management proxy circulars, in the same manner as if such investors beneficially owned their underlying securities outside of CP HOLDRS from the broker through which they hold their CP HOLDRS. CP HOLDRS also are subject to certain reconstitution events that are set out in the depositary agreement.

C. Listing and Trading of CP HOLDRS

The Commission finds that the NYSE's proposal contains adequate rules and procedures to govern the trading of CP HOLDRS. CP HOLDRS are equity securities that will be subject to the full panoply of NYSE rules governing the trading of equity securities on the NYSE, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.

In addition, the NYSE has developed specific listing and delisting criteria for CP HOLDRS that will help to ensure that a minimum level of liquidity will exist for CP HOLDRS to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the NYSE to consider the suspension of trading and the delisting of a CP HOLDR if an event occurred that made further dealings in such securities inadvisable. This will give the NYSE flexibility to delist CP HOLDRS if circumstances warrant such action.

Moreover, in approving this approval, the Commission notes the Exchange's belief that CP HOLDRS will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a CP HOLDR comparable to the overall value of the deposited securities.

Finally, the NYSE has developed surveillance procedures for CP HOLDRS

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See supra,* footnote 9.

[18] *See supra,* footnote 10.

that incorporate and rely upon existing NYSE surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and CP HOLDRS. Accordingly, the Commission believes that the rules governing the trading of CP HOLDRS provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

D. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading CP HOLDRS. The prospectus will address the special characteristics of CP HOLDRS, including a statement regarding its redeemability and method of creation. The Commission notes that all original investors in CP HOLDRS who obtain CP HOLDRS by surrendering their CP Shares will receive a prospectus. Finally, the Securities Act of 1933 and rules thereunder [19] require all broker-dealers who acquire CP HOLDRS from the depositary for resale to customers to deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of CP HOLDRS, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in CP HOLDRS. The circular also will inform members of Exchange policies regarding trading halts in CP HOLDRS.

E. Scope of the Commission's Order

The Commission is approving in general the NYSE's proposed listing standards for CP HOLDRS and, specifically, the listing of the CP HOLDRS described herein. The Exchange has represented that the unique nature of its proposed CP HOLDRS product makes the promulgation of generic listing standards impractical. The Commission specifically notes that CP HOLDRS arise from a corporate reorganization, that there is a broad and liquid market for CP shares, and that the five underlying securities that result from this corporate reorganization are registered under Section 12 of the Act. Consequently, the Exchange has incorporated the listing standards for equities set forth in Paragraph 703.19 of the Manual, as well as the continued listing criteria for specialized securities pursuant to Paragraph 802.01D of the Manual, as the appropriate listing standards for CP HOLDRS. Although the Commission finds that these standards satisfy Section 6(b)(5) of the Act with respect to CP HOLDRS, the Commission specifically notes that this approval order, which incorporates the listing standards for equities in Paragraph 703.19, is limited to this unique product. Other similarly structured products will require separate review by the Commission prior to being traded on the Exchange.

F. Accelerated Approval

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[20] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the NYSE filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility and convenience afforded by this new instrument by listing and trading them as soon as possible. The Commission notes that the Exchange has indicated that it will have adequate surveillance procedures in place to monitor the trading of this new HOLDRS product. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSE–2001–35) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–22510 Filed 9–6–01 8:45 am]

BILLING CODE 8010–01–M

[19] *See supra,* footnote 12.

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on September 24, 2001, from 9 a.m. to 4 p.m. The meeting will be opened to the public from 9 a.m. to 10 a.m. and again from 10:45 a.m. to 4 p.m. The meeting will be closed to the public from 10 a.m. to 10:45 a.m.

DATES: The meeting is scheduled for September 24, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 4830, of the Department of Commerce, located at 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Pam Wilbur, (principal contacts), at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following topics will be addressed:

- Briefing by the new Assistant Secretary for Trade Development, Linda Conlin, on her goals and on Trade Promotion Authority.
- Discussion of the APEC SME Ministerial.
- Committee Business
- Update on SBA programs
- Discussion of the TPCC benchmarking initiative.
- Discussion of new initiatives for minority and underserved outreach, the closing of the MBDO office, and status of the District Export Council program.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–22544 Filed 9–6–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC–13) will hold a meeting on September 11, 2001, from 9 a.m. to 12 noon. The meeting will be opened to the public from 9 a.m. to 9:45 a.m. and closed to the public from 9:45 a.m. to 12 noon.

DATES: The meeting is scheduled for September 11, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 6057, of the Department of Commerce, located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Holderman (principal contacts), at (202) 482–0345, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following topics will be addressed:

- Preparations for the WTO GATS negotiations in October 2001 and WTO Ministerial in Qatar, November 2001.
- Services in current anti-dumping case.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–22545 Filed 9–6–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending August 17, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10401.
Date Filed: August 14, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR–ME 0114 dated 13 July 2001
TC2 Europe-Middle East Resolutions r1–r29
PTC2 EUR–ME 0115 dated 24 July 2001
Technical Correction to PTC2 EUR–ME 0114 dated 13 July 2001
MINUTES—PTC2 EUR–ME 0116 dated 14 August 2001
TABLES—PTC2 EUR–ME Fares 0053 dated 24 July 2001
Intended effective date: 1 January 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–22537 Filed 9–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending August 24, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10455
Date Filed: August 20, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0124 dated 14 August 2001
Mail Vote 141—Resolution 010L
TC23/TC123 Africa—TC3
Special Passenger Amending Resolution from Libya r1–r11
Intended effective date: 30 August 2001

Docket Number: OST–2001–10476
Date Filed: August 22, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC1 0190 dated 14 August 2001
TC1 Caribbean Expedited Resolutions 002LL, 015v
PTC1 0192 dated 14 August 2001
TC1 Within South America Expedited Resolutions 001aa, 002y, 078ec
Intended effective date: 15 September

Docket Number: OST–2001–10477
Date Filed: August 22, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC1 0191 dated 14 August 2001
TC1 Longhaul (except between USA and Chile)
Expedited Resolutions r1-r6
Intended effective date: 15 September 2001

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–22540 Filed 9–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 17, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.* The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–1393.
Date Filed: August 13, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 4, 2001.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41101 and 14 CFR Part 377, subpart B, requesting renewal of its certificate for Route 517, authorizing scheduled foreign air transportation of persons, property and mail between Dallas/Fort Worth, Texas and Tokyo, Japan.

Docket Number: OST–1996–1394
Date Filed: August 13, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 4, 2001.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart B, requesting renewal of segment 4 of its certificate for Route 602, authorizing scheduled foreign air transportation of persons, property, and mail between the coterminal points Dallas/Fort Worth, Texas and Miami, Florida, the intermediate points the Azores and

Lisbon, Portugal, and the coterminal points Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain.

Docket Number: OST–2001–10393.

Date Filed: August 13, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 4, 2001.

Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 41102 and Part 302, Subpart B, requesting amendment of its certificate of public convenience and necessity to engage in the foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Mexico, on the other.

Docket Number: OST–2001–10427.

Date Filed: August 15, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 5, 2001.

Description: Application of Flight Alaska, Inc., d/b/a Yute Air Alaska, Inc., pursuant to 14 CFR 302.10(a)(2), requesting the issuance of a Final Order on an expedited basis, granting the application to make effective the passenger authority in its certificate of public convenience and necessity. To facilitate rapid Department action, Flight Alaska requests that the answer period be shortened to 14 days, from the 21 days provided in 14 CFR Section 302.204(a).

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–22538 Filed 9–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During The Week Ending August 24, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–1371.

Date Filed: August 23, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 13, 2001.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108 and Subpart B, requesting renewal of its authority to engage in scheduled foreign air transportation of persons, property and mail between the terminal point Atlanta, Georgia, and the coterminal points Madrid, Barcelona, Malaga and Palma de Mallorca, Spain.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–22539 Filed 9–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Portage County, WI

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

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

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed highway improvement of United States Highway (US) 10 from the vicinity of Trestik Road west of the Village of Junction City to Portage County Trunk Highway (CTH) K east of the City of Stevens Point in Portage County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Shemwell, Pavement Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin 53719–2814, telephone: (608) 829–7521. You may also contact Ms. Carol Cutshall, Director, Bureau of Environment, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965; telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare the second tier of a tiered environmental impact statement to improve US 10 as an ultimate four lane roadway from Trestik Road west of Junction City to CTH K east of Stevens Point, a distance of about 26 miles.

The overall second tiered EIS will have two distinct segments. The west segment extends from Trestik Road to I 39/US 51, while the east segment is from I 39/US 51 to CTH K. There will be two levels of analysis done. The western segment will be analyzed in detail, with the Final EIS completing the environmental documentation requirements for the improvements of US 10 along this segment.

For the eastern segment, conceptual highway corridors will be studied in broad, general corridors. This level of study will complete the first tier of an environmental evaluation for this section. To ensure the accuracy of the generalized impacts and compliance with current legislation, additional environmental documentation will be required for specific design projects along this eastern segment of US 10.

Improvements to the overall corridor are considered necessary to provide for the existing and projected traffic demand. US 10 in Portage County is classified as a principle arterial. Truck volume on the route is high. All the US 10 traffic passes through the communities of Junction City and Stevens Point, which contributes to congestion and traffic related impacts within those communities.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the environmental impacts of alternatives including (1) no-build, (2) improvements along the existing rural corridor, with possible relocated alignments along portions of the route, (3) bypass corridors around Junction City and Stevens Point, and (4) improvement alternatives through Junction City and Stevens Point.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data

gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 28, 2001.

Wesley A. Shemwell,

Pavement Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 01–22532 Filed 9–6–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 8X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Dickey County, ND and Brown County, SD

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 18.3 miles of rail line from milepost 134.65 in or near Oakes, in Dickey County, ND to milepost 116.3 in or near Hecla, in Brown County, SD. The line traverses United States Postal Service Zip Codes 58474 and 57446.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be reroute over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on October 9, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 17, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 27, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., 5th Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RRVW has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 14, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by September 7, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: August 29, 2001.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–22263 Filed 9–6–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 30, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0895.
Form Number: IRS Form 3800.
Type of Review: Revision.
Title: General Business Credit.
Description: Internal Revenue Code (IRC) section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit,

which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeeper: 272,197.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—17 hr., 56 min.
Learning about the law or the form—1 hr., 0 min.
Preparing and sending the form to the IRS—1 hr., 19 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,514,712 hours.

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–91 Final.

Type of Review: Extension.

Title: Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

Description: These regulations clarify certain requirements of sections 1.6035–1, 1.6038–2 and 1.6046–1 of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1336.

Form Number: IRS Forms 9455 and 9456.

Type of Review: Extension.

Title: IRS Taxpayer Education Programs Annual Survey (9455); and IRS Taxpayer Education Programs Annual Survey 2nd Notice (9456).

Description: The data collected will be used to estimate the number of individuals who teach IRS' tax education programs, and the number of students who are exposed to the Understanding Taxes High School, UT–8th Grade, UT–Post Secondary, and the Small Business Tax Education Programs during the course of a year. It will also be used to justify the continued use of these programs. This effort is in line with IRS initiatives on reducing taxpayer burden and Compliance 2000 initiatives to encourage voluntary compliance with the tax laws.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 120,800.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 20,137 hours.

OMB Number: 1545–1575.

Regulation Project Number: REG–116608–97 Final .

Type of Review: Extension.

Title: Eligibility Requirements After Denial of the Earned Income Credit.

Description: This information is to provide guidance to taxpayers who have been denied the earned income credit (EIC).

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour .

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–22541 Filed 9–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 30, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0086.

Form Number: IRS Form 1040–C.

Type of Review: Extension.

Title: U.S. Departing Alien Income Tax Return.

Description: Form 1040–C is used by aliens departing the U.S. to report income received for the entire tax year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 4 min.
Learning about the law or the form—45 min.
Preparing the form—2 hr., 10 min.
Copying, assembling, and sending the form to the IRS—1 hr., 11 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 11,292 hours.

OMB Number: 1545–1010 .

Form Number: IRS Form 1120–RIC.

Type of Review: Revision.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Description: Form, 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,277.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—57 hr., 24 min.
Learning about the law or the form—19 hr., 42 min.
Preparing the form—36 hr., 24 min.
Copying, assembling, and sending the form to the IRS—4 hr., 17 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 385,966 hours.

OMB Number: 1545–1022.

Form Number: IRS Form 7018–C.

Type of Review: Extension.

Title: Order Blank for Forms.

Description: Form 7018—C allows taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 868,432.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 43,422 hours.

OMB Number: 1545–1743.
Form Number: IRS Form 8851.
Type of Review: Extension.
Title: Summary of Archer MSAs.
Description: This form will be used by the IRS to determine whether numerical limits set forth in section 220(j)(1) have been exceeded.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hr., 35 min.
Learning about the law or the form—6 min.
Preparing, copying, assembling, and sending the form to the IRS—9 min.
Frequency of Response: Annually, Other (additional report for 2001).
Estimated Total Reporting/ Recordkeeping Burden: 1,540,000 hours.
OMB Number: 1545–1746.
Form Number: IRS Form 13094.
Type of Review: Extension.
Title: Recommendation for Juvenile Employment with the Internal Revenue Service.
Description: The data collected on the form provides the Internal Revenue Service with a consistent method for making suitability determinations on juveniles for employment within the Service.
Respondents: Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 208 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 01–22542 Filed 9–6–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 31, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0971.
Form Number: IRS Form 1041–ES.
Type of Review: Extension.
Title: Estimated Income Tax for Estates and Trusts.
Description: Form 1040–ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimated tax is $1,000 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 1,200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—19 min.
Learning about the law or the form—15 min.
Preparing the form—1 hr., 33 min.
Copying, assembling, and sending the form to the IRS—1 hr.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,281,200 hours.
OMB Number: 1545–1292.
Regulation Project Number: PS–97–91 and PS–101–90 Final.
Type of Review: Extension.
Title: Enhanced Oil Recovery Credit.
Description: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 73 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,460 hours.
OMB Number: 1545–1617.
Regulation Project Number: REG–118966–97 Final.
Type of Review: Extension.
Title: Information Reporting With Respect to Certain Foreign Partnerships and Certain Foreign Corporations.
Description: Section 6038 requires certain U.S. persons who own interests in controlled foreign partnerships or certain foreign corporations to annually report information to the IRS. This regulation provides reporting rules to identify foreign partnerships and foreign corporations which are controlled by U.S. persons.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 250 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 01–22543 Filed 9–6–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 25, 2001.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 25, 2001, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 25, 2001, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax 2 returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Daniel L. Black, Jr.,

Chief, Appeals.

[FR Doc. 01–22562 Filed 9–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Special Enrollment Examination Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service, Office of Director of Practice, Treasury.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is given of a meeting of the Special Enrollment Examination Advisory Committee.

DATES: The meeting will be held Tuesday, September 25, 2001 (8:30 a.m. to 4:00 p.m.) Written requests to speak at the meeting or to attend the meeting must be received no later than September 18, 2001.

ADDRESSES: The meeting will be held at offices of the Internal Revenue Service, Bankamerica Building, 200 W Adams Street, Room 608 A and B, Chicago, Illinois. Written requests to speak at the meeting or to attend the meeting must be mailed, faxed, or e-mailed to: Internal Revenue Service, Office of Director of Practice, N:C:SC:DOP, Attn: Kathy Hughes, Designated Federal Officer, 1111 Constitution Avenue, NW, Washington, DC 20224; fax number 202–694–1934; e-mail address *Kathy.E.Hughes@irs.gov.*

FOR FURTHER INFORMATION CONTACT: Kathy Hughes, Designated Federal Officer, Special Enrollment Examination Advisory Committee, at 202–694–1851.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to cover the following agenda:

Tuesday, September 25, 2001

8:30 a.m.–11:30 a.m.
Public Session: Discussion of Continuing Professional Education Guidelines
1 p.m.–3 p.m.
Public Session: Discussion of Structure of Special Enrollment Examination
3 p.m.–4 p.m.
Public Session: Opportunity for interested individuals to offer remarks germane to agenda topics or Enrolled Agent Program

Beginning at 3 p.m. interested persons may speak at the meeting in accordance with the following limitations: (1) speakers' remarks must be germane to the topics listed above or germane to the Enrolled Agent Program; and (2) remarks must be limited to no more than 10 minutes. Persons wishing to speak must send Kathy Hughes, the Designated Federal Officer, a written request, and the text or outline of their remarks, prior to the meeting in order to allow for the compilation of a speakers list. Speakers will be entered on the list in order of the receipt of their requests. No more than six requests will be accepted. Speakers will be notified of their position on the list, or in case more than six requests are received, that their requests to speak cannot be granted. Persons interested in attending the meeting (but not speaking) must also send Kathy Hughes a written request prior to the meeting in order to allow for adequate seating. Every effort will be made to accommodate all requests for attendance. Written requests to speak and written requests to attend must be received no later than September 18, 2001.

At any time, any interested person may submit to Kathy Hughes a written statement concerning the SEE or the Enrolled Agent Program. Such statements will be considered by the Director of Practice and, at his discretion, may be referred to the Committee for discussion at a later meeting.

Dated: August 30, 2001.

Patrick W. McDonough,

Director of Practice.

[FR Doc. 01–22561 Filed 9–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee will meet at the Department of Veterans Affairs, Education Service Conference Room 601V, 1800 G. St., NW., Washington DC, on Thursday, September 20, 2001, from 8:30 a.m. to 4 p.m., and from 8:30 a.m. to 12 p.m. on Friday, September 21, 2001. The agenda for this inaugural meeting will include overview of VA policies concerning approval of licensing and certification testing. The majority of this initial meeting will be dedicated to determining the functions of the Committee. Established by Public Law 106–419, the purpose of the Committee is to provide advice and counsel to the Secretary, Veterans Affairs on matters regarding the requirements of organizations or entities offering licensing and certification tests taken by individuals entitled to payment under VA's education and training programs. Those planning to attend the open meeting should contact Ms. Lynn M. Cossette or Mr. William G. Susling at (202) 273–7187 by September 14, 2001.

Dated: August 30, 2001.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 01–22468 Filed 9–6–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
September 7, 2001

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–25031–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ARMY*: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning Branch, Attn: CEMP-IP, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–5737; *NAVY*: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: August 31, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register report for 9/7/01

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only

Bldg. 301
Naval Support Activity
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200020041
Status: Excess
Comment: 18,608 sq. ft., presence of asbestos/lead paint, needs major rehab

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020080
Status: Unutilized
Comment: 29,800 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020081
Status: Unutilized
Comment: Presence of lead paint, most recent use—storage, off-site use only

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020082
Status: Unutilized
Comment: 110 TR, needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead paint, off-site use only

Bldg. 434
Naval Warfare Systems Center

San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020086
Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020087
Status: Unutilized
Comment: 3857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020088
Status: Unutilized
Comment: 3119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020089
Status: Unutilized
Comment: 3732 sq ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020090
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020091
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use onlyBldgs. 23027, 23025
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200040023
Status: Unutilized
Comment: 400 sq. ft., metal siding, most recent use—loading facility, off-site use only

Bldg. 200
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200110007
Status: Excess
Comment: 7390 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station

Bldg. 205
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200110008
Status: Excess
Comment: 3886 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—offices

Bldg. 211
Naval Postgraduate School
Monterey Co: CA 93943-
Landholding Agency: Navy
Property Number: 77200110009
Status: Excess
Comment: 6329 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—offices

Bldg. 228
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200110010
Status: Excess
Comment: 6000 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—fitness center

Bldg. 12174
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110048
Status: Excess
Comment: 480 sq. ft., most recent use—change house, off-site use only

Bldg. 16007
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110049
Status: Excess
Comment: 300 sq. ft., most recent use—firing station, off-site use only

Bldg. 16009
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110050
Status: Excess
Comment: most recent use—camera station, off-site use only

Bldg. 16025
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110051
Status: Excess
Comment: 4220 sq. ft., most recent use—offices, off-site use only

Bldg. 16052
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110052
Status: Excess
Comment: 560 sq. ft., most recent use—storage, off-site use only

Bldg. 31497
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110053
Status: Excess
Comment: most recent use—fragmentation pool, off-site use only

Bldg. 31501
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110054
Status: Excess
Comment: 3666 sq. ft., most recent use—lab, off-site use only

Bldg. 31520
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110055
Status: Excess
Comment: 693 sq. ft., most recent use—storage, off-site use only

Bldg. 31522
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110056
Status: Excess
Comment: 144 sq. ft., most recent use—equip. bldg., off-site use only

Bldg. 31584
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110057
Status: Excess
Comment: 113 sq. ft., most recent use—storage, off-site use only

Bldg. 31585
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110058
Status: Excess
Comment: most recent use—testing tower, off-site use only

Bldg. 31587
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110059
Status: Excess
Comment: most recent use—obsv. tower, off-site use only

Bldg. 32527
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110060
Status: Excess
Comment: most recent use—equip. shelter, off-site use only

Bldg. 32528
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110061
Status: Excess
Comment: 192 sq. ft., most recent use—control station, off-site use only

Bldg. 32529
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110062

Status: Excess
Comment: 300 sq. ft., most recent use—control bldg., off-site use only

Bldg. 32574
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110063
Status: Excess
Comment: most recent use—hazmat pad, off-site use only

Bldg. 32575
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110064
Status: Excess
Comment: most recent use—hazmat pad, off-site use only

Bldg. 7
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110074
Status: Unutilized
Comment: 47,442 sq. ft., needs rehab, presence of lead paint, most recent use—warehouse, off-site use only

Bldg. 117
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110075
Status: Unutilized
Comment: 17,682 sq. ft., needs rehab, most recent use—machine shop, off-site use only

Bldg. 149
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110076
Status: Unutilized
Comment: 1617 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 245
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110077
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—valve shop, off-site use only

Bldg. 3123
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110078
Status: Unutilized
Comment: 3360 sq. ft., needs rehab, presence of asbestos, most recent use—cafeteria, off-site use only

Bldg. 3327
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110079
Status: Unutilized
Comment: 240 sq. ft., needs rehab, presence of lead paint, most recent use—flame spray, off-site use only

Bldg. 3442
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110080
Status: Unutilized
Comment: 1080 sq. ft., needs rehab, most recent use—picnic canopy, off-site use only

Bldg. 3482
Naval Station
San Diego Co: CA 92136–
Landholding Agency: Navy
Property Number: 77200110081
Status: Unutilized
Comment: 280 sq. ft., needs rehab, off-site use only

Bldg. 01290
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120090
Status: Excess
Comment: 460 sq. ft., most recent use—garage, off-site use only

Bldg. 02453
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120110
Status: Excess
Comment: 48 sq. ft., most recent use—storage locker, off-site use only

Bldg. 32027
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120111
Status: Excess
Comment: 331 sq. ft., off-site use only

Bldg. 32534
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120112
Status: Excess
Comment: 2252 sq. ft., most recent use—repair shop, off-site use only

Bldg. 32537
Naval Air Weapons Station
China Lake Co: CA 93444–6001
Landholding Agency: Navy
Property Number: 77200120113
Status: Excess
Comment: most recent use—instrument bldg., off-site use only

Colorado

Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only

Connecticut

Bldgs. 31, 78, 91
Naval Submarine Base
New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200030055
Status: Unutilized
Comment: Total sq. ft. = 41,809, presence of asbestos, most recent use—storage/training/repair, off-site use only

Bldg. 406
Naval Submarine Base
New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200030056
Status: Unutilized
Comment: 13,546 sq. ft., needs rehab, presence of asbestos, most recent use—shop, off-site use only

Bldg. 392
Naval Sub Base New London
Groton Co: CT 06349–
Landholding Agency: Navy
Property Number: 77200030065
Status: Unutilized
Comment: 996 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Hawaii

Bldg. T–158
Pohakuloa Training Area
Pohakuloa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200130089
Status: Unutilized
Comment: 984 sq. ft. quonset hut, off-site use only

Bldg. T–207
Pohakuloa Training Area
Pohakuloa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200130090
Status: Unutilized
Comment: 1968 sq. ft. quonset hut

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only

8 Bldgs.
Iroquois Point Navy Housing
Ewa Beach Co: HI 96706–
Location: #5404, 5409, 5415, 5441, 5403, 5411, 5413, 5435
Landholding Agency: Navy
Property Number: 77200110015 Status: Unutilized Comment: 1808 to 2000 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Kansas

Bldg. P–394
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200130091
Status: Unutilized
Comment: 504 sq. ft., needs rehab, most recent use—storage, off-site use only

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only

Maryland

Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 2222A
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130095
Status: Unutilized
Comment: 66 sq. ft., most recent use—storage, off-site use only

Bldg. 2222B
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130096
Status: Unutilized
Comment: most recent use—storage, off-site use only

Bldg. 2478
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130097
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only.

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Unutilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only

Bldg. 104
Naval Surface Warfare
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120079
Status: Unutilized
Comment: 8050 sq. ft., most recent use—garage, off-site use only

Bldg. 109
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5000
Landholding Agency: Navy
Property Number: 77200120080
Status: Unutilized
Comment: 9650 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 110
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700

Landholding Agency: Navy
Property Number: 77200120081
Status: Unutilized
Comment: 10,750 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 111
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120082
Status: Unutilized
Comment: 4220 sq. ft., most recent use—office, off-site use only

Bldg. 112
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120083
Status: Unutilized
Comment: 2440 sq. ft., most recent use—printing bldg., off-site use only

Bldg. 113
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120084
Status: Unutilized
Comment: 2440 sq. ft., most recent use—lab, off-site use only

Bldg. 143
Naval Surface Warfare
West Bethesda Co: MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120085
Status: Unutilized
Comment: 16,950 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 152
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120086
Status: Unutilized
Comment: 1400 sq. ft., most recent use—fire house annex, off-site use only

Bldg. 159
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120087
Status: Unutilized
Comment: 605 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—hazardous waste storage, off-site use only

Bldg. 187
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120088
Status: Unutilized
Comment: 768 sq. ft., most recent use—pump house, off-site use only

Bldg. 117
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120102
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 124
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120103
Status: Unutilized
Comment: 480 sq. ft., needs rehab, most recent use—warehouse, off-site use only

Bldg. 130
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120104
Status: Unutilized
Comment: 2225 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage/recycling, off-site use only

Bldg. 181
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120105
Status: Unutilized
Comment: 491 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—equip. maint., off-site use only

Bldg. 196
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120106
Status: Unutilized
Comment: 456 sq. ft., needs rehab, most recent use—destructor bldg., off-site use only

Bldg. 493
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120155
Status: Excess
Comment: 5476 sq. ft., presence of asbestos, most recent use—maint/storage, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Hampshire

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldg. 179
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020099
Status: Excess
Comment: 1452 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—quarters, off-site use only

Bldg. 201
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020100
Status: Excess
Comment: 450 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 304
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020101
Status: Excess
Comment: 1320 sq. ft., presence of asbestos/lead paint, most recent use—garb. house, off-site use only

Bldg. 10
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy

Property Number: 77200030018
Status: Excess
Comment: 12,000 sq. ft., presence of asbestos/lead paint, most recent use—shop facility, off-site use only

Bldg. 239
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200030019
Status: Excess
Comment: 897 sq. ft., presence of asbestos/lead paint, off-site use only

New Jersey

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldg. D1–A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940024
Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940025
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. C–16
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010014
Status: Unutilized
Comment: 34,811 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. C–25
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010015
Status: Unutilized
Comment: 4,448 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. C–40
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010016
Status: Unutilized
Comment: 6,924 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 511
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010017
Status: Unutilized
Comment: 1,871 sq. ft., presence of asbestos/lead paint, off-site use only

Bldgs. 553, 554, 555
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010018
Status: Unutilized
Comment: guard towers, off-site use only

Bldg. 557
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010019
Status: Unutilized
Comment: 9,670 sq. ft., presence of asbestos/lead paint, off-site use only

New Mexico

Bldg. 01714
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130107
Status: Unutilized
Comment: 468 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20451
White Sand Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130108
Status: Unutilized
Comment: 186 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20452
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130109
Status: Unutilized
Comment: 168 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20453
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130110
Status: Unutilized
Comment: 168 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20454
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130111
Status: Unutilized
Comment: 151 sq .ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20455
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130112
Status: Unutilized
Comment: 266 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 20457
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130113
Status: Unutilized
Comment: 166 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 21610
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130114
Status: Unutilized
Comment: 6440 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. 27912
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130115
Status: Unutilized
Comment: 320 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 27920
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130116
Status: Unutilized
Comment: 608 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 28791
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130117
Status: Unutilized
Comment: 324 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 29015
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130118
Status: Unutilized
Comment: 332 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 29016
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130119
Status: Unutilized
Comment: 320 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 30211
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130120
Status: Unutilized
Comment: 324 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 32740
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130121
Status: Unutilized
Comment: 168 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 33137
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130122
Status: Unutilized
Comment: 240 sq. ft., needs rehab, presence of asbestos, most recent use—power plant, off-site use only

Bldg. 33138
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130123

Status: Unutilized
Comment: 216 sq. ft., needs rehab, presence of asbestos, most recent use—dispatch office, off-site use only

Bldg. 33151
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130124
Status: Unutilized
Comment: 384 sq. ft., needs rehab, presence of asbestos, most recent use—power plant, off-site use only

Bldg. 33152
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130125
Status: Unutilized
Comment: 240 sq. ft., needs rehab, presence of asbestos, most recent use—instrument bldg., off-site use only

Bldg. 33170
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130126
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—communications, off-site use only

Bldg. 34049
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130127
Status: Unutilized
Comment: 1256 sq. ft., needs rehab, presence of asbestos, off-site use only

Bldg. 34054
White Sands Missile Range
White Sands Co: Dona Anna NM 88002–
Landholding Agency: Army
Property Number: 21200130128
Status: Unutilized
Comment: 320 sq. ft., needs rehab, presence of asbestos, off-site use only

New York

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–744, T–745
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130138
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, most recent use—barracks, off-site use only

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130139
Status: Unutilized
Comment: 15606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only

Bldg. T–2442
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130141
Status: Unutilized
Comment: 4340 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Quarters 372
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130143
Status: Unutilized
Comment: 1248 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Quarters 1000
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130144
Status: Unutilized
Comment: 2800 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Bldg. 691
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130145
Status: Unutilized
Comment: 2561 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 709
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130146
Status: Unutilized
Comment: 1666 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 759
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130147
Status: Unutilized
Comment: 11,942 sq. ft., needs repair, possible asbestos/lead paint, most recent use—community center, off-site use only

Bldg. 1280
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130148
Status: Unutilized
Comment: 2760 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Bldg. 1664
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130149
Status: Unutilized
Comment: 800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair,

presence of asbestos/lead paint, off-site use only

Oklahoma

Bldg. S–4636
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200130151
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–4749
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200130152
Status: Unutilized
Comment: 1438 sq. ft., possible asbestos/lead paint, most recent use—weather station, off-site use only

Pennsylvania

Bldg. 38
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010020
Status: Unutilized
Comment: 6525 sq. ft., metal butler bldg., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 5
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030071
Status: Unutilized
Comment: 286,824 sq. ft., needs rehab, presence of asbestos, most recent use—warehouse, off-site use only

Bldg. 47
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030072
Status: Unutilized
Comment: 16,343 sq. ft., presence of asbestos, most recent use—office, off-site use only

Bldg. 55
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030073
Status: Unutilized
Comment: 5603 sq. ft., needs repair, presence of asbestos, most recent use—store, off-site use only

Bldg. 531
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030074
Status: Unutilized
Comment: 5102 sq ft., presence of asbestos, most recent use—office, off-site use only

Bldg. 996
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030075
Status: Unutilized
Comment: 1800 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Rhode Island

Bldg. 1
Old Naval Hospital
One Riggs Road
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200010022
Status: Unutilized
Comment: 49,189 sq. ft., presence of asbestos/lead paint, needs major repair, NEPA requirements, boiler plant which provides heat and hot water to bldg. will be shut down

Bldg. K–61
Naval Station
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200030079
Status: Unutilized
Comment: 32,836 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 685
Naval Station
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77200030080
Status: Unutilized
Comment: 25,090 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—navy lodge, off-site use only

Virginia

Bldg. 400
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130153
Status: Unutilized
Comment: 128 sq. ft., most recent use—storehouse, off-site use only

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

7 Bldgs.
Fort Eustis
#1612–1617, 1620
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130155
Status: Unutilized
Comment: plant utility bldgs., storage, treatment facilities

Bldg. 1559
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Bldg. P00151
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200130157
Status: Unutilized
Comment: 1098 sq. ft., most recent use—housing maint., off-site use only

Bldg. TT0135
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200130158
Status: Unutilized
Comment: 2144 sq. ft., needs major rehab, most recent use—thrift shop, off-site use only

Bldgs. SP–79/80/81/79AQ
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110034
Status: Excess
Comment: most recent use—residential & detachable garage, high maintenance, presence of asbestos, off-site use only

Structure SP–129
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110136
Status: Excess
Comment: 3564 sq. ft., presence of asbestos/lead, most recent use—office, off-site use only

Land (by State)

Virginia

Land
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200040034
Status: Unutilized
Comment: 4900 sq. ft. open space

Suitable/Unavailable Properties

Buildings (by State)

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use-laundry.

Land (by State)

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

2.6 acres
Naval Station

Norfolk Co: VA 23508–1273
Landholding Agency: Navy
Property Number: 77200120131
Status: Underutilized
Comment: most recent use—brush/debris storage

1.15 acres
Naval Amphibious Base Little Creek
Norfolk Co: VA 23508–
Landholding Agency: Navy
Property Number: 77200120132
Status: Unutilized
Comment: most recent use—open space

Suitable/To Be Excessed

Buildings (by State)

Puerto Rico

Bldg. 561
Former Ramey AFB
Aguadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos

Unsuitable Properties

Buildings (by State)

Arizona

Bldg. 958
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040001
Status: Excess
Reason: Extensive deterioration

Bldg. 1216
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040002
Status: Excess
Reason: Extensive deterioration

Bldg. 676
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040003
Status: Excess
Reason: Extensive deterioration

Bldg. 321
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110001
Status: Excess
Reason: Extensive deterioration

Bldg. 322
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110002
Status: Excess
Reason: Extensive deterioration

Bldg. 331
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110003
Status: Excess
Reason: Extensive deterioration

Bldg. 332
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110004
Status: Excess
Reason: Extensive deterioration

California

Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration

Bldg. 444
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area Extensive deterioration

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy
Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized

Reason: Extensive deterioration
Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930100
Status: Unutilized
Reason: Extensive deterioration
Bldg. 206
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930105
Status: Unutilized
Reason: Extensive deterioration
Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration
Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration
Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration
Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration
Bldg. 921
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration
Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration
Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration
Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration
Bldg. 337
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration
Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration
Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration
Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration
Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration
Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration
Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration
Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration
Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration
Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration
Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration
Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration
Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration
Bldg. 55
Naval Amphibious Base
Imperial Beach Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration
Bldg. 154
Naval Air Station
North Island Co: CA 92132–
Landholding Agency: Navy

Property Number: 77200010037
Status: Excess
Reason: Extensive deterioration

OT68
Space & Navy Warfare
Systems Center
San Diego Co: CA 92152–5001
Landholding Agency: Navy
Property Number: 77200010076
Status: Unutilized
Reason: Floodway

Bldg. 1234
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010077
Status: Excess
Reason: Extensive deterioration

Bldg. 1439
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010078
Status: Excess
Reason: Extensive deterioration

Bldg. 1443
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010079
Status: Excess
Reason: Extensive deterioration

Bldg. 2231
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010080
Status: Excess
Reason: Extensive deterioration

Bldg. 2232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010081
Status: Excess
Reason: Extensive deterioration

Bldg. 2582
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010082
Status: Excess
Reason: Extensive deterioration

Bldg. 2583
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010083
Status: Excess
Reason: Extensive deterioration

Bldg. 21544
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010084
Status: Excess
Reason: Extensive deterioration

Bldg. 21549
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010085
Status: Excess
Reason: Extensive deterioration

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010086
Status: Excess
Reason: Extensive deterioration

Bldg. 32927
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010087
Status: Excess
Reason: Extensive deterioration

Bldg. 130167
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010088
Status: Excess
Reason: Extensive deterioration

Bldg. 130175
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010089
Status: Excess
Reason: Extensive deterioration

Bldg. 201076
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010090
Status: Excess
Reason: Extensive deterioration

Bldg. 201487
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010091
Status: Excess
Reason: Extensive deterioration

Bldg. 1684
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010092
Status: Excess
Reason: Extensive deterioration

Bldg. 16146
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010093
Status: Excess
Reason: Extensive deterioration

Bldg. 43332
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010094
Status: Excess
Reason: Extensive deterioration

Bldg. 43333
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010095
Status: Excess
Reason: Extensive deterioration

Bldg. 43334
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010096
Status: Excess
Reason: Extensive deterioration

Bldg. 43335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010097
Status: Excess
Reason: Extensive deterioration

Bldg. 43336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010098
Status: Excess
Reason: Extensive deterioration

Bldg. 43337
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010099
Status: Excess
Reason: Extensive deterioration

Bldg. 52651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010100
Status: Excess
Reason: Extensive deterioration

Bldg. 17A
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200020001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 62327
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020034
Status: Excess
Reason: Extensive deterioration

Bldg. 3314
Marine Corps Air Station
Miramar Co: CA 92145–
Landholding Agency: Navy
Property Number: 77200020035
Status: Excess
Reason: Extensive deterioration

Bldgs. 5157, 5158
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020045
Status: Unutilized
Reason: Secured Area

Facility 13181
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020046
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Facility 14220
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020047
Status: Unutilized

Reasons: Secured Area Extensive deterioration
Facility 24151
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020048
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 22074
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020092
Status: Unutilized
Reason: Extensive deterioration
Bldg. 62324
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020093
Status: Unutilized
Reason: Extensive deterioration
Bldg. H–62
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020094
Status: Unutilized
Reason: Extensive deterioration
Bldg. 1442
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020106
Status: Unutilized
Reason: Extensive deterioration
Bldg. 1651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020107
Status: Unutilized
Reason: Extensive deterioration
Bldg. 13162
Marine Corps Base
Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020108
Status: Unutilized
Reason: Extensive deterioration
Bldg. 14100
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020109
Status: Unutilized
Reason: Extensive deterioration
Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020110
Status: Unutilized
Reason: Extensive deterioration
Bldg. 23025
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030001
Status: Unutilized
Reason: Secured Area
Bldg. 23027
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030002
Status: Unutilized
Reason: Secured Area
Bldg. 731
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030003
Status: Excess
Reason: Extensive deterioration
Bldg. 731A
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030004
Status: Excess
Reason: Extensive deterioration
Bldg. 865
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030005
Status: Excess
Reason: Extensive deterioration
Bldg. 868
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030006
Status: Excess
Reason: Extensive deterioration
Bldg. 474
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030007
Status: Excess
Reason: Extensive deterioration
Bldg. 5021
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030008
Status: Excess
Reason: Extensive deterioration
Bldg. 5022
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030009
Status: Excess
Reason: Extensive deterioration
Bldg. 5025
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030010
Status: Excess
Reason: Extensive deterioration
Bldg. 5113
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200030011
Status: Excess
Reason: Extensive deterioration
Bldg. 5114
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030012
Status: Excess
Reason: Extensive deterioration
Bldgs. 82 & 84
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030013
Status: Excess
Reason: Extensive deterioration
Bldg. 6–1
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030014
Status: Excess
Reason: Extensive deterioration
Bldg. 479
Naval Construction Battalion Ctr.
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030015
Status: Excess
Reason: Extensive deterioration
Bldg. 1131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030025
Status: Excess
Reason: Extensive deterioration
Bldg. 1132
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030026
Status: Excess
Reason: Extensive deterioration
Bldg. 1141
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030027
Status: Excess
Reason: Extensive deterioration
Bldg. 1145
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030028
Status: Excess
Reason: Extensive deterioration
Bldg. 1256
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030029
Status: Excess
Reason: Extensive deterioration
Bldg. 1362
Marine Corps Base
Camp Pendleton Co: CA 92055–

Landholding Agency: Navy
Property Number: 77200030030
Status: Excess
Reason: Extensive deterioration

Bldg. 1363
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030031
Status: Excess
Reason: Extensive deterioration

Bldg. 1622
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030032
Status: Excess
Reason: Extensive deterioration

Bldg. 1623
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030033
Status: Excess
Reason: Extensive deterioration

Bldg. 13115
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030034
Status: Excess
Reason: Extensive deterioration

Bldg. 13125
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030035
Status: Excess
Reason: Extensive deterioration

Bldg. 13142
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030036
Status: Excess
Reason: Extensive deterioration

Bldg. 16134
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030037
Status: Excess
Reason: Extensive deterioration

Bldg. 16135
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030038
Status: Excess
Reason: Extensive deterioration

Bldg. 16136
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030039
Status: Excess
Reason: Extensive deterioration

Bldg. 16137
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030040
Status: Excess
Reason: Extensive deterioration

Bldg. 43432
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030041
Status: Excess
Reason: Extensive deterioration

Bldg. 62408
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030042
Status: Excess
Reason: Extensive deterioration

Bldg. 801
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200030043
Status: Unutilized
Reason: Extensive deterioration

Bldg. 41
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030044
Status: Unutilized
Reason: Extensive deterioration

Bldg. 103
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 259
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 260
Naval Const. Battalion Ctr
Port Hueneme Co: CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 274
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 462
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 488
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1150
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1156
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1275
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030053
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1321
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030054
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21091
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21127
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030059
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9919
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030060
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9920
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030061
Status: Unutilized
Reason: Extensive deterioration

Bldg. OT33
Old Town Campus
Naval Space & Warfare Systems
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200040004
Status: Unutilized
Reason: Extensive deterioration

Bldg. OT–5
Old Town Campus
Naval Space & Warfare Systems
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200040005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1393
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200040024

Status: Excess
Reason: Extensive deterioration
Bldg. 25155
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200040025
Status: Excess
Reason: Extensive deterioration
Bldg. 25158
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200040026
Status: Excess
Reason: Extensive deterioration
Bldg. 25159
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200040027
Status: Excess
Reason: Extensive deterioration
Bldg. 27
Naval Postgraduate School
Fleet Numerical Meteor. & Ocean. Ctr.
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200110005
Status: Excess
Reason: Secured Area
Bldg. 50
Naval Postgraduate School
Fleet Numerical Meteor. & Ocean. Ctr.
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200110006
Status: Excess
Reason: Secured Area
Bldg. 1468
Naval Base Ventura
on Parcel 1
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200110013
Status: Unutilized
Reason: Secured Area
Bldg. 1469
Naval Base Ventura
on Parcel 1
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200110014
Status: Unutilized
Reason: Secured Area
Bldg. 12041
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110065
Status: Excess
Reason: Extensive deterioration
Bldg. 12052
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110066
Status: Excess
Reason: Extensive deterioration
Bldg. 16066
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110067
Status: Excess
Reason: Extensive deterioration
Bldg. 16074
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110068
Status: Excess
Reason: Extensive deterioration
Bldg. 16085
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110069
Status: Excess
Reason: Extensive deterioration
Bldg. 16086
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110070
Status: Excess
Reason: Extensive deterioration
Bldg. 16100
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110071
Status: Excess
Reason: Extensive deterioration
Bldg. 16115
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110072
Status: Excess
Reason: Extensive deterioration
Bldg. 16117
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110073
Status: Excess
Reason: Extensive deterioration
Bldg. 1235
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110082
Status: Excess
Reason: Extensive deterioration
Bldg. 1682
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110083
Status: Excess
Reason: Extensive deterioration
Bldg. 1683
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110084
Status: Excess
Reason: Extensive deterioration
Bldg. 1691
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110085
Status: Excess
Reason: Extensive deterioration
Bldg. 16109
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110086
Status: Excess
Reason: Extensive deterioration
Bldg. 16110
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110087
Status: Excess
Reason: Extensive deterioration
Bldg. 16128
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110088
Status: Excess
Reason: Extensive deterioration
Bldg. 33378
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110089
Status: Excess
Reason: Extensive deterioration
Bldg. 33566
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110090
Status: Excess
Reason: Extensive deterioration
Bldg. 33967
Marine Corps Base
Camp Pendleton Co: CA 920550–
Landholding Agency: Navy
Property Number: 77200110091
Status: Excess
Reason: Extensive deterioration
Bldg. 41318
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110092
Status: Excess
Reason: Extensive deterioration
Bldg. 41319
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110093
Status: Excess
Reason: Extensive deterioration
Bldg. 43454
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110094
Status: Excess
Reason: Extensive deterioration
Bldg. 43455
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110095
Status: Excess
Reason: Extensive deterioration
Bldg. 1231
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110096
Status: Excess

Reason: Extensive deterioration

Agency

Bldg. 1687
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110097
Status: Excess
Reason: Extensive deterioration

Bldg. 2622
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110098
Status: Excess
Reason: Extensive deterioration

Bldg. 31523
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200110099
Status: Excess
Reason: Extensive deterioration

Bldg. 467
Marine Corps Recruit Depot
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200110100
Status: Unutilized
Reason: Secured Area

Bldg. 121 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120001
Status: Excess
Reason: Extensive deterioration

Bldg. 121A SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120002
Status: Excess
Reason: Extensive deterioration

Bldg. 121B SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120003
Status: Excess
Reason: Extensive deterioration

Bldg. 137 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120004
Status: Excess
Reason: Extensive deterioration

Bldg. 223 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120005
Status: Excess
Reason: Extensive deterioration

Bldg. 171
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120069
Status: Unutilized
Reason: Secured Area

Bldg. 336
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120070
Status: Unutilized
Reason: Secured Area

Bldg. 338
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120071
Status: Unutilized
Reason: Secured Area

Bldg. 339
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120072
Status: Unutilized
Reason: Secured Area

Bldg. 345
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120073
Status: Unutilized
Reason: Secured Area

Bldg. 354
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120074
Status: Unutilized
Reason: Secured Area

Bldg. 355
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120075
Status: Unutilized
Reason: Secured Area

Bldg. 357
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. F–28
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120077
Status: Unutilized
Reason: Secured Area

Bldg. F–31
Naval Base Pt. Loma
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200120078
Status: Unutilized
Reason: Secured Area

Bldg. 01289
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120089
Status: Excess
Reason: Extensive deterioration

Bldg. PM1529
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120094
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM1606
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 53320
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120096
Status: Excess
Reason: Extensive deterioration

Bldg. 53321
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120097
Status: Excess
Reason: Extensive deterioration

Bldg. 53335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120098
Status: Excess
Reason: Extensive deterioration

Bldg. 53336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120099
Status: Excess
Reason: Extensive deterioration

Bldg. 70140
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120107
Status: Excess
Reason: Extensive deterioration

Bldg. 70141
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120108
Status: Excess
Reason: Extensive deterioration

Bldg. 70143
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120109
Status: Excess
Reason: Extensive deterioration

Bldg. 25062
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120114
Status: Excess
Reason: Extensive deterioration

Bldg. 33023
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120115
Status: Excess
Reason: Extensive deterioration

Bldg. 33054

Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120116
Status: Excess
Reason: Extensive deterioration

Bldg. 106
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120134
Status: Excess
Reason: Extensive deterioration

Bldg. 108
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120135
Status: Excess
Reason: Extensive deterioration

Bldg. 109
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120136
Status: Excess
Reason: Extensive deterioration

Bldg. 110
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120137
Status: Excess
Reason: Extensive deterioration

Bldg. 147
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120138
Status: Excess
Reason: Extensive deterioration

Bldg. 163
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120139
Status: Excess
Reason: Extensive deterioration

Bldg. 244
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92133–5704
Landholding Agency: Navy
Property Number: 77200120140
Status: Excess
Reason: Extensive deterioration

Bldg. 250
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120141
Status: Excess
Reason: Extensive deterioration

Bldg. 251
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120142
Status: Excess
Reason: Extensive deterioration

Bldg. 252
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120143
Status: Excess
Reason: Extensive deterioration

Bldg. 311
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120144
Status: Excess
Reason: Extensive deterioration

Bldg. 313
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120145
Status: Excess
Reason: Extensive deterioration

Bldg. 318
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120146
Status: Excess
Reason: Extensive deterioration

Bldg. 339
Naval Amphibious Base
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120147
Status: Excess
Reason: Extensive deterioration

Bldg. C–54
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120148
Status: Excess
Reason: Extensive deterioration

Bldg. C–114
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120149
Status: Excess
Reason: Extensive deterioration

Bldg. 124
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120150
Status: Excess
Reason: Extensive deterioration

Bldg. 311
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120151
Status: Excess
Reason: Extensive deterioration

Bldg. 312
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120152
Status: Excess
Reason: Extensive deterioration

Bldg. 605
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120153
Status: Excess
Reason: Extensive deterioration

Bldg. 610
North Island
Naval Base Coronado
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200120154
Status: Excess
Reason: Extensive deterioration

Bldg. 471
Marine Corps Recruit Depot
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130103
Status: Unutilized
Reason: Secured Area

Connecticut

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199930025
Status: Unutilized
Reason: Extensive deterioration

Bldg. 480
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200010075
Status: Unutilized
Reason: Secured Area

10 Bldgs./84.62 acres
Naval Weapons Ind. Rsv. Pl.
Bloomfield Co: Hartford CT 06002–0002
Landholding Agency: Navy
Property Number: 77200020096
Status: Unutilized
Reason: Secured Area

Bldg. 308
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200030016
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Naval Submarine Base
#1, 3, 80, 154, 426
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200120006
Status: Unutilized
Reason: Extensive deterioration

District of Columbia

Bldg. A–092

Naval Station Anacostia
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200110046
Status: Underutilized
Reason: Secured Area

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reasons: Secured Area
Extensive deterioration

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area

Bldg. 1558
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 592
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 610
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7L
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7M
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7N
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 70
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. A–952
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010034
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–962
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010035
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–1105
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 44
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010038
Status: Unutilized
Reason: Secured Area

Bldg. 58
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010039
Status: Unutilized
Reason: Secured Area

Bldg. 365
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010040
Status: Unutilized
Reason: Secured Area

Bldg. 455
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010041
Status: Unutilized
Reason: Secured Area

Bldg. 467
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010042
Status: Unutilized
Reason: Secured Area

Bldg. 475
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010043
Status: Unutilized
Reason: Secured Area

Bldg. 605A
Naval Air Station
Pensacola Co: Escambia FL 43508–
Landholding Agency: Navy
Property Number: 77200010044
Status: Unutilized
Reason: Secured Area

Bldg. 689
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010045

Status: Unutilized
Reason: Secured Area

Bldg. 802A
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010046
Status: Unutilized
Reason: Secured Area

Bldg. 835
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010047
Status: Unutilized
Reason: Secured Area

Bldg. 859B
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010048
Status: Unutilized
Reason: Secured Area

Bldg. 859C
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010049
Status: Unutilized
Reason: Secured Area

Bldg. 869
Naval Air Station
Pensacola Co: Escambia FL 32598–
Landholding Agency: Navy
Property Number: 77200010050
Status: Unutilized
Reason: Secured Area

Bldg. 1713
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010051
Status: Unutilized
Reason: Secured Area

Bldg. 2437
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010052
Status: Unutilized
Reason: Secured Area

Bldg. 2462
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010053
Status: Unutilized
Reason: Secured Area

Bldg. 3446
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010054
Status: Unutilized
Reason: Secured Area

Bldg. 3478
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010055
Status: Unutilized
Reason: Secured Area

Bldg. 3878
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010056
Status: Unutilized
Reason: Secured Area

Bldg. 7H
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020064
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7J
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020065
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7K
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020066
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 106
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020067
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 135
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020068
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 142
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020069
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 584
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020070
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 610
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020071
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 702
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020072
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 703
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020073
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 725
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020074
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 740A
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020075
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 54
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 211
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 114
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040006
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 133
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040007

Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 141
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040008
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

16 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 142, 151, 153, 156, 164, 170, 171, 176, 178, 180, 182–187
Landholding Agency: Navy
Property Number: 77200040009
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

11 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 103, 105, 112, 113, 115–119, 121, 122
Landholding Agency: Navy
Property Number: 77200040010
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

23 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 143–150, 152, 154, 155, 157, 158, 160–163, 165, 166, 168, 169, 179, 181
Landholding Agency: Navy
Property Number: 77200040011
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 173, 174, 175, 177, 188
Landholding Agency: Navy
Property Number: 77200040012
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

6 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 130–132, 134–136
Landholding Agency: Navy
Property Number: 77200040013
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldgs. 159, 167, 172
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040014
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 124, 127, 138–140
Landholding Agency: Navy
Property Number: 77200040015
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 107, 109, 111, 120, 123
Landholding Agency: Navy
Property Number: 77200040016
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 102, 104, 106, 108, 110
Landholding Agency: Navy
Property Number: 77200040017
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 36
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 348
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1801
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway Secured Area, Extensive deterioration

Bldg. 1802
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway Secured Area, Extensive deterioration

Bldg. 1803
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway Secured Area, Extensive deterioration

Bldg. 1859
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area, Extensive deterioration

Bldg. 1558
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200110016
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 183
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110019
Status: Unutilized
Reason: Secured Area

Bldg. 494
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110020
Status: Unutilized
Reason: Secured Area

Bldg. 647
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110021
Status: Unutilized
Reason: Secured Area

Bldg. 649B
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110022
Status: Unutilized
Reason: Secured Area

Bldg. 679
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110023
Status: Unutilized
Reason: Secured Area

Bldg. 692
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110024
Status: Unutilized
Reason: Secured Area

Bldg. 755
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110025
Status: Unutilized
Reason: Secured Area

Bldg. 785
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110026
Status: Unutilized
Reason: Secured Area

Bldg. 1704
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110027

Status: Unutilized
Reason: Secured Area

Bldg. 3448
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110028
Status: Unutilized
Reason: Secured area

Bldg. 3579
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110029
Status: Unutilized
Reason: Secured area

Bldg. 3673
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110030
Status: Unutilized
Reason: Secured area

Bldg. 3823
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110031
Status: Unutilized
Reason: Secured area

Bldg. 3824
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200110032
Status: Unutilized
Reason: Secured area

Bldg. 369
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200120007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 370
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200120008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2012
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200120009
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–25
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120117
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–222
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120118
Status: Unutilized
Reason: Extensive deterioration

Bldg. 226
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120119
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–255
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120120
Status: Unutilized
Reason: Extensive deterioration

Bldg. 299
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120121
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–325
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120122
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–628
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120123
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–634
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120124
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–728
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200120125
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured area

Facility 5002
Naval Submarine Base
Kings Bay Co: Camaden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured area

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured area

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured area

Guam

Bldg. 26
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020049
Status: Unutilized
Reason: Secured area

Bldg. 3116
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020052
Status: Unutilized
Reason: Secured area

Bldg. 123
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120091
Status: Unutilized
Reason: Secured area

Bldg. 124
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120092
Status: Unutilized
Reason: Secured area

Bldg. 135
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120093
Status: Unutilized
Reason: Secured area

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured area

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive deterioration, Secured area

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive deterioration, Secured area

Bldg. 9

Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured area

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured area

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration

Bldg. S380
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration

Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured area

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured area

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured area

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured area

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured area, Extensive deterioration

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured area

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured area

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured area,

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured area,

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured area,

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized

Reason: Secured area,

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured area,

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured area,

Indiana

Bldg. 3
Naval Surface Warfare
Naval Investigation Ofc.
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area,

3 Bldgs.
Naval Surface Warfare 157, 166, 171
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area,

3 Bldgs.
Naval Surface Warfare
#22, 2792, 2794
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010059
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured area,

3 Bldgs.
Naval Surface Warfare
#158, 167, 172
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010060
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldgs. 162, 163
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010061
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldgs. 169D, 169E
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

4 Bldgs.
Naval Surface Warfare
#173, 2171, 2172, 2179
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

5 Bldgs.
Naval Surface Warfare 2174, 2175, 2176, 2193, 2784
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldgs. 2500, 2501
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

3 Bldgs.
Naval Surface Warfare
#2502, 2503, 2715
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010066
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

10 Bldgs.
Naval Surface Warfare
#2803, 2855–2863
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010067
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldgs. 2905, 3074
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010068
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Maine

Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration

Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration

Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration

Bldg. 90
Naval Security Group Activity
Winter Harbor Co: ME 00000–
Landholding Agency: Navy
Property Number: 77200020098
Status: Excess
Reason: Extensive deterioration

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 163
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010033
Status: Unutilized
Reason: Extensive deterioration

Bldg. 867
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120010
Status: Excess
Reason: Extensive deterioration

Bldg. 868
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120011
Status: Excess
Reason: Extensive deterioration

Bldg. 1044
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120012
Status: Excess
Reason: Extensive deterioration

Mississippi

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 187
Naval Construction Battalion Center

Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930012
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reason: Secured area

Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 49
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010024
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 130
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010025
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 368
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010026
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 390
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010027
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 43
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030076
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 44
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030077
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 164
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030078
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Missouri

Steam Line/Support Structure
Marine Corps Support Activity
Kansas City Co: Jackson MO 64147–
Landholding Agency: Navy
Property Number: 77200030017
Status: Unutilized
Reason: Extensive deterioration

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured area

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured area

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured area

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured area

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reason: Secured area

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured area

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured area

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured area

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured area

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured area

New Jersey

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unutilized
Reason: Extensive deterioration

28 Sheds
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940026
Status: Unutilized
Reason: Extensive deterioration

Bldg. FA–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010008
Status: Unutilized
Reason: Extensive deterioration

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010009
Status: Unutilized
Reason: Extensive deterioration

Bldg. R–18
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010010
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–62
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010011
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–412
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010012
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–457
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1042
Naval Air Eng. Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200040039
Status: Unutilized
Reason: Extensive deterioration

Hangar 1
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200110101
Status: Underutilized
Reason: Secured area

Bldg. B–33
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200110102
Status: Underutilized
Reason: Secured area

Bldg. B–487A
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200110103
Status: Excess
Reason: Secured area

New Mexico

Bldg. N149
Naval Air Warfare
White Sands Co: NM 88002–
Landholding Agency: Navy
Property Number: 77200110104
Status: Excess
Reason: Extensive deterioration

North Carolina

Bldg. M–319
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200120127
Status: Unutilized
Reason: Secured area

Pennsylvania

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration

Bldg. 185
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration

Facility 22
Naval Support Station
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77199940060
Status: Excess
Reason: Extensive deterioration

Bldg. 85
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 51
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 52
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 84
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 950
Navy Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200030070
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

B–38
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075

Status: Unutilized
Reason: Extensive deterioration

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road, Extensive deterioration

South Carolina

Bldg. 49
Naval Public Works Center
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020062
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 38
Naval Air Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020105
Status: Unutilized
Reasons: Secured area, Extensive deterioration

4 Industrial Bldgs.
Naval Weapons Station Charleston 88, 92, 94, 354
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

4 Heat Plant Bldgs.
Naval Weapons Station Charleston 89, 95, 355, 438
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

8 Security Bldgs.
Naval Weapons Station Charleston 313, 859, 860, 897, 918, 1654, 1655, 3217
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

8 Storage Bldgs.
Naval Weapons Station Charleston 307, 353, 799, 831, 861, 933, 984, 994 Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

6 Bldgs.
Naval Weapons Station Charleston 183, 855, 868, 968, 3238, 408 Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 2012
Naval Weapons Station
Charleston
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200030057
Status: Excess
Reason: Extensive deterioration

Bldg. 7
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040030
Status: Unutilized
Reason: Secured area

Bldg. 314
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040031
Status: Unutilized
Reason: Secured area

Bldg. 316
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040032
Status: Unutilized
Reason: Secured area

36 Bldgs.
Naval Weapons Station Charleston
Goose Creek Co: Berkeley SC 29445–
Location: 34, 47, 63, 67, 203, 276, 297, 306, 334, 350, 370, 383, 435, 725, 798, 806, 823, 844, 905, 906, 907, 912, 915, 919, 920, 923, 924, 948, 954, 992, 2333, 2334, 3232, 3741, 3761, 454
Landholding Agency: Navy
Property Number: 77200110033
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured area
Extensive deterioration

6 Bldgs.
Naval Support Activity #2003, 2016, 2024, 2025, 2076, 2077
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200120013
Status: Excess
Reason: Secured area

Bldgs. 430, 434, R23–99
Naval Support Activity
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200130104
Status: Excess
Reason: Secured area

5 Bldgs.
Naval Support Activity
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200130105
Status: Excess
Reason: Secured area

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured area
Extensive deterioration

Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured area

Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area
Extensive deterioration

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940052
Status: Excess
Reason: Extensive deterioration

Bldg. 198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940053
Status: Excess
Reason: Extensive deterioration

Bldg. 1104
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940054
Status: Excess
Reason: Extensive deterioration

Bldg. 1198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940055
Status: Excess
Reason: Extensive deterioration

Bldg. 1823
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940056
Status: Excess
Reason: Extensive deterioration

Bldg. H–9
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940057
Status: Excess
Reason: Extensive deterioration

Bldg. H–45

Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940058
Status: Excess
Reason: Extensive deterioration

Bldg. H–54
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940059
Status: Excess
Reason: Extensive deterioration

Bldg. 1504
Naval Air Station
Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200110018
Status: Unutilized
Reason: Extensive deterioration

Facility 119
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200110047
Status: Excess
Reasons: Within airport runway clear zone, Secured area, Extensive deterioration

Bldg. 1149
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4200
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1173
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1268
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120017
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1837
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1346
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200120156
Status: Excess
Reasons: Secured area, Extensive deterioration

Virginia

Bldg. O2
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration

Bldg. 2208
Naval Medical Clinic
Quantico VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 358, 359
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–43
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration

CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration

Bldg. 715

Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration

Bldg. 3170
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1252, 1277
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area,

Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 108
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 299
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 400
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 436
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 442, 443
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 530
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 532
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 646–651
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 758, 759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 764
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 784
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 786
Naval Weapons Station Yorktown
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 788
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 790
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 814
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 1955–1957
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020028

Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 1960, 1961, 1964
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldgs. 1980, 1981
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 160
Cheatham Annex
Williamsburg Co: VA 23185–5830
Landholding Agency: Navy
Property Number: 77200020031
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 1453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–5000
Landholding Agency: Navy
Property Number: 77200020063
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 2185
Marine Corps Base
Quantico Co: VA 00000–
Landholding Agency: Navy
Property Number: 77200040018
Status: Excess
Reason: Extensive deterioration

Facility 85
St. Julien's Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110121
Status: Excess
Reason: Extensive deterioration

Facility 113
St. Julien's Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110122
Status: Excess
Reason: Extensive deterioration

Structure 161
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110123
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 162
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110124
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 236
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110125
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 273
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110126
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 276
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110127
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 327
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110128
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 358
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110129
Status: Excess
Reasons: Secured area, Extensive deterioration

Bldg. 13
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120024
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 14
Naval Weapons Station
Yorktown Co: VA 2369 –
Landholding Agency: Navy
Property Number: 77200120025
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 22
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 23
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120027
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 70
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120028
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 87
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120029
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 88
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120030
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 118
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 385
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120032
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 396A
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120033
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 492
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120034
Status: Excess
Reasons: Secured area, Extensive deterioration

Bldg. 507
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120035
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 612

Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1224
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120037
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1225
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120038
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1226
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120039
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1227
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120040
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1228
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120041
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1587
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120042
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1588
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120043
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1589
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120044
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1590
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120045
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1591
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120046
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 1612
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120047
Status: Excess
Reasons: Secured area, Extensive deterioration

Structure 1743
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120048
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 103B
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120049
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B109
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120050
Status: Unutilized
Reason: Extensive deterioration

Bldg. B112
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 123
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120052
Status: Unutilized
Reason: Extensive deterioration

Bldg. B132
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120053
Status: Unutilized
Reason: Extensive deterioration

Bldg. B157
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120054
Status: Unutilized
Reason: Extensive deterioration

Bldg. 170A
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120055
Status: Unutilized
Reason: Extensive deterioration

Bldg. B239
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120056
Status: Unutilized
Reason: Extensive deterioration

Bldg. B362
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120057
Status: Unutilized
Reason: Extensive deterioration

Bldg. B396
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120058
Status: Unutilized
Reason: Extensive deterioration

Bldg. B402
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120059
Status: Unutilized
Reason: Extensive deterioration

Bldg. B425
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120060
Status: Unutilized
Reason: Extensive deterioration

Bldg. B428
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120061
Status: Unutilized
Reason: Extensive deterioration

Bldg. B451
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120062
Status: Unutilized
Reason: Extensive deterioration

Bldg. B465
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120063
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1100

Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120064
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1124
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120065
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9411
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120066
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9429
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120067
Status: Unutilized
Reason: Extensive deterioration

Tracks
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232
St. Julian's Creek Annex
Portsmouth Co: VA –
Landholding Agency: Navy
Property Number: 77200120130
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Coal Handling Facilities
Puget Sound Naval Shipyard #908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: Contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons:
Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured area, Extensive deterioration

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured area

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured area

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured area

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured area

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reasons: Secured area, Extensive deterioration

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200010074
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

8 Bldgs.
Naval Station
902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Bldg. 109
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 157
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 161
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 170
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 262
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 482
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040019
Status: Excess
Reason: Secured area

Bldg. 529
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040020
Status: Excess
Reason: Secured area

Bldg. 133
Naval Undersea Warfare Station
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200120133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area, Extensive deterioration

Bldg. 2511
NAS Whidbey Island
Oak Harbor Co: Island WA 98278–3500
Landholding Agency: Navy
Property Number: 77200120157
Status: Excess
Reason: Secured Area

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area

PCL–4 (11.60 acres)
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020095
Status: Underutilized
Reason: Secured area

Parcel 1
Naval Base Ventura
NWC & SWC 32nd Ave.
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110011
Status: Underutilized
Reason: Secured area

Parcel 2
Naval Base Ventura
NWC Patterson Rd.
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110012
Status: Underutilized
Reason: Secured area

Parcel 3
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110037
Status: Underutilized
Reason: Secured area

Parcel 4
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110038
Status: Underutilized
Reason: Secured area

Parcel 7
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110039
Status: Underutilized
Reason: Secured area

Parcel 8
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110040
Status: Underutilized
Reason: Secured area

Parcel 10

Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110041
Status: Underutilized
Reason: Secured area

Parcel 11
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110042
Status: Underutilized
Reason: Secured area

Parcel 12
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110043
Status: Underutilized
Reason: Secured area

Parcel 13
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110044
Status: Underutilized
Reason: Secured area

Parcel 14
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110045
Status: Underutilized
Reason: Secured area

District of Columbia

1600 sq. ft./T–88
Naval Research Lab
Washington Co: DC 20375–5320
Landholding Agency: Navy
Property Number: 77200110118
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured area

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured area

New Hampshire

Parcel #4
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Parcel #5
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Parcel #6
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010030
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

Parcel #7
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010031
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured area

Parcel of land 144 sq. ft.
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200120126
Status: Underutilized
Reason: Secured area

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured area

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Federal Register

Friday,
September 7, 2001

Part III

Department of Health and Human Services

Center for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Payments for New Medical Services and New Technologies Under the Acute Care Hospital Inpatient Prospective Payment System; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS 1176–F]

RIN 0938–AL09

Medicare Program; Payments for New Medical Services and New Technologies Under the Acute Care Hospital Inpatient Prospective Payment System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a mechanism for increased Medicare payments for new medical services and technologies furnished to Medicare beneficiaries under the acute care hospital inpatient prospective payment system. The rule implements section 533 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000; and finalizes related regulatory provisions that were addressed in a proposed rule published in the **Federal Register** on May 4, 2001 (66 FR 22646).

EFFECTIVE DATE: This final rule is effective October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Under the prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the diagnosis-related group (DRG) to which a Medicare beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

On December 21, 2000, Congress passed the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554). Section 533 of Public Law 106–554 requires the Secretary to establish a mechanism to recognize the costs of new medical services and technologies under the hospital inpatient prospective payment system by October 1, 2001, and to report to Congress on ways to more expeditiously incorporate new services and technologies into the DRG system under the hospital inpatient prospective payment system.

II. Issuance of Proposed Rule

On May 4, 2001 (66 FR 22646), as part of the annual hospital inpatient prospective payment system proposed rule, we proposed a mechanism to recognize the costs of new medical services and technologies and qualifying criteria for payments for these services and technologies. We received 61 public comments (which are addressed throughout this preamble) on our proposed criteria to qualify for this special payment and on the proposed mechanism to pay for qualifying new technologies. Due to this large number of public comments, we decided not to finalize the proposed mechanism and qualifying criteria in the FY 2002 hospital inpatient prospective payment system final rule (August 1, 2001, 66 FR 39828), but to publish a separate final rule.

In the August 1, 2001 hospital inpatient prospective payment system final rule, we indicated that although we intend to establish the mechanism by October 2001, we will not make additional payments under the mechanism for cases involving new technology during Federal fiscal year (FY) 2002 because it is not feasible. This is due to the timing of the enactment of Public Law 106–554 on December 21, 2000, the requirement that we establish the mechanism through notice and an opportunity for public comment, and the requirement that the payments be implemented in a budget neutral manner. That is, it was not feasible to establish the criteria by which new technologies would qualify through a proposed rule with opportunity for public comment as part of the May 4, 2001 proposed rule, finalize those criteria in response to public comments, allow technologies to qualify under those criteria, and implement payments for any qualified technologies in a budget neutral manner. Making the special payments in a budget neutral manner requires an adjustment to the standardized amounts (which must be published in final by August 1 each year) that we use to pay acute care hospitals under the prospective payment system.

III. Incorporating New Medical Services and Technologies in the Hospital Inpatient Prospective Payment System

Much attention recently has focused on how well Medicare incorporates the cost of new medical services and technologies into its payment systems. Of particular concern is the adequacy of Medicare's payment systems in facilitating access to new technologies for Medicare beneficiaries. Thus, section 533 of Public Law 106–554 was enacted. The discussion that follows addresses the requirements of section 533 of Public Law 106–554 for establishing a mechanism for recognizing the costs of new medical services and technologies, and for reporting to Congress on the ways to more expeditiously incorporate new services.

A. Overview

Medicare payment for an inpatient hospital discharge under the inpatient

prospective payment system is determined by multiplying the relative weight associated with a particular DRG by the national average standardized amount (adjusted for other hospital characteristics such as a geographic wage index, teaching status, and treating a high percentage of low-income patients). Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The DRG relative weights are recalculated each year to reflect the average resources expended across all hospitals to treat patients within a particular DRG.

In general, the inpatient prospective payment system makes payments for new medical services and technologies as soon as these items are payable. New items or services generally fit within existing DRGs, and hospitals using these items and services will be paid at established payment rates for the applicable DRGs. Payment rates subsequently may be adjusted through the annual process of evaluating the assignment of cases within DRGs and recalculating the relative weights associated with each DRG based on average charges. These annual adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

Since the prospective payment system was first implemented in October 1983, the pace of innovation in medical technology has been rapid. Generally speaking, the system appears to have accommodated these innovations without occasioning significant concerns regarding access to new technologies. In its March 2001 report to the Congress, the Medicare Payment Advisory Commission stated ''the design of the inpatient PPS [prospective payment system] makes it easier to ensure an appropriate distribution of payments while accommodating technological advances'' (page 44).

B. Current Practice—Coding and Payment

A number of issues arise relating to present methods of incorporation of new technologies in the inpatient hospital prospective payment system. One issue is the appropriate ICD–9–CM code to be assigned to the new technology. This issue is discussed in detail below. Assuming the new technology is or can be covered by Medicare, a determination must be made concerning to which DRG should the new technology be assigned. The DRG (and the value of the relative weight associated with that DRG) to which the new technology is assigned determines the payment rate for the new technology. Under the DRG system, the condition of the patient is the primary consideration in the decision to assign a new technology to a DRG. Therefore, a new technology generally will be assigned to the same DRG as the DRG's predecessor technologies and treatment modalities. In this way, hospitals can receive payment for new technology under the inpatient hospital prospective payment system quickly. As use of the new technology diffuses among hospitals, we have gradually and largely automatically recalibrated DRG payment rates based on hospital claims data to reflect increasing or decreasing costs of cases assigned to the DRG. Generally, it takes 2 years for claims data to be reflected in recalibrated DRG weights. Considering the actual costs as reflected in the claims data, we may also reassign new technologies to different DRGs. However, because a new technology is often more costly initially than the predecessor technologies, the adequacy of the initial payment rate occasionally becomes an issue.

At present, if payment is to be made other than by routine assignment of the new technology to an existing DRG, it is necessary to establish a new ICD–9–CM code. The lag between application for a new code and its being made effective for payment is at least a year. Because we use actual charge data from hospitals, additional costs or savings from the new technology are not reflected in the DRG weight for 2 years after a new code is effective. For example, the costs or savings attributable to any new technologies that were assigned new ICD–9–CM codes effective October 1, 1999, will be reflected in the DRG relative weights effective for discharges on or after October 1, 2001.

The lag before new technology affected payment has been viewed by some observers as a useful check on payment changes, helping to ensure that these changes reflect the benefit of a new technology. Hospitals would adopt and utilize the new technology, it was reasoned, with a speed and to a degree commensurate with its medical advantages. Any differences in the resource requirements between the new and existing technologies would then be reflected over time in claims data and in changes in the DRG weights. To the extent particular new technologies may have been initially given relatively low payment, the design of the system provided incentives to compensate by achieving efficiencies elsewhere. Conversely, if a particular new technology reduced costs compared to existing technologies, hospitals would reap the payment benefits until such time as the DRG weights began to reflect the lower costs.

C. Current Practice—Data

Recently, we provided an explicit avenue to permit more rapid payment adjustment through use of additional data. The Conference Report that accompanied the Balanced Budget Act of 1997 (Pub. L. 105–33) stated that ''in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the conferees believe that HCFA [now CMS] should consider, to the extent feasible, reliable, validated data other than Medicare Provider Analysis and Review (MedPAR) data in annually recalibrating and reclassifying the DRGs'' (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., at 734 (1997)). The MedPAR data contains records for all Medicare hospital discharges and is the source data used for DRG recalibration. Although we had never precluded the use of non-MedPAR data, we established an explicit process for the submission of such data in a manner consistent with the annual recalibration of the DRG weights. We stated in the July 30, 1999 **Federal Register** that, in the case of external data, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule. This would allow us to verify and test the data and make a preliminary assessment as to the feasibility of the data's use (64 FR 41499). Subsequently, a complete database must be submitted no later than December 1, approximately 4 months prior to the publication of the proposed rule. On the issue of the use of sample data, we stated in the **Federal Register** that we were not establishing specific criteria regarding sample sizes or data collection methodologies prior to gaining experience that would enable us to realistically reflect the availability of external data based on actual experience. We also encouraged anyone interested in submitting such data in the future to contact us to discuss the specific data they wish to submit and whether the data may be adequate.

D. New Legislation

Section 533 of Public Law 106–554 addresses the issue of how new technologies are introduced into the DRGs, and how DRG payment rates must be adapted to accommodate them. Specifically, the provision requires that the Secretary:

- Not later than April 1, 2001, submit a report to Congress on methods of expeditiously incorporating new medical services and technologies into the clinical coding system.
- Not later than October 1, 2001, implement the preferred methods described in the report.
- Effective October 1, 2001, establish a mechanism to recognize the costs of new medical services and technologies after notice and opportunity for public comment.
- Establish criteria to identify new medical services or technologies after notice and an opportunity for public comment.

E. DRG Assignment Issues

As background for discussion of how the DRGs should be changed to better accommodate new technology, this section will discuss the rationale for basing the initial DRG assignment on patient condition. The underlying assumption of the prospective payment system is that because hospitals are responsible for the delivery of care they can respond to the incentives to control costs inherent in the system. The success of any payment system that is predicated on providing incentives for cost control is almost totally dependent on the effectiveness with which the incentives are communicated. The DRGs were designed to be a management tool that is used also as the basis for prospective payments. The key distinction between a management tool and payment method is the ability of the hospital to use the information to take action in response to the incentives in the system. Thus, a management tool communicates information in a form and at a level of detail that can lead to specific actions. The effectiveness of any incentive-based payment system is enhanced if the payment method is simultaneously a management tool.

Because the DRGs were developed to group clinically similar patients, an extremely important means of communication between the clinical and financial aspects of care was created. DRGs provided administrators and physicians with a meaningful basis for evaluating both the process of providing care and the associated financial impacts. Development of care pathways by DRG and profit-and-loss reports by DRG product lines became commonplace. With the adoption of these new management methods, length of stay and the use of ancillary services dropped dramatically.

The DRGs not only provided a communications tool for hospital management, but they also provided an effective means for hospitals and Medicare to communicate. Instead of accountants and lawyers arguing the fine points of cost accounting, the focus of payment deliberations became the determination of a fair payment rate for patients with specific clinical problems. The vast majority of modifications to the DRGs since the inception of the Medicare inpatient hospital prospective payment system have resulted from recommendations from hospitals. The recommendations have almost always been the result of clinicians identifying specific types of patients with unique needs. A recent example of such a clinical dialogue relates to the DRGs for burns. The FY 1999 update to the DRGs included a major restructuring of the burn DRGs. This restructuring was the direct result of detailed and specific clinical recommendations provided to CMS by burn specialists.

Central to the success of the Medicare inpatient hospital prospective payment system is that DRGs have remained a clinical description of why the patient required hospitalization. We believe it would be undesirable to transform DRGs into detailed descriptions of the technology and processes used by the hospital to treat the patient. If such a transformation were to happen, the DRGs would become largely a repackaging of fee-for-service without the management and communication benefits. A fundamental assumption underlying DRGs is that the hospital has the responsibility for deciding what technology and process to employ in treating a particular type of patient. As hospitals in the aggregate make treatment decisions, these decisions are reflected in the DRG payment weights. The separation of the clinical and payment weight methodologies allows a stable clinical methodology to be maintained while the payment weights evolve in response to changing practice patterns. The packaging of all services associated with the care of a particular type of patient into a single payment amount provides the incentive for efficiency inherent in a DRG-based prospective payment system. Substantial disaggregation of the DRGs into smaller units of payment, or a substantial number of cases receiving extra payments, would undermine the incentives and communication value in the DRG system.

F. Coding Issues

To permit us to identify use of a new technology on hospital claims and hence to make different payments than would otherwise be applicable, we would require a code that can be used to specify when that technology is used.

1. Process for Establishing New Codes

The ICD–9–CM Coordination and Maintenance Committee is responsible for discussing potential changes to ICD–9–CM. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes, while CMS has lead responsibility for the ICD–9–CM procedure codes. The Committee holds meetings twice a year, usually in May and November. Agendas for the discussions about procedure codes are published on CMS' Internet website a month before the meeting. A **Federal Register** notice is also published listing topics to be discussed. The meetings are open to the public and are held usually in Baltimore, Maryland. Shortly afterwards, an extensive summary of the meeting is published on CMS' website and the public is given an additional opportunity to comment. Final comments are due by early January. A complete, current timeline is included in the Summary Report of the Committee at: *www.hcfa.gov/medicare/icd9cm.htm.*

For a topic to be discussed at one of the two yearly meetings of the Committee, the Committee must receive a request 2 months prior to the meeting. This timeframe allows CMS to publish the agendas in the **Federal Register** notices and allows individuals and organizations to review the agenda and to determine if they wish to attend the public meetings. The timeframe is also necessary to allow the Committee to research the topic and prepare a draft solution in time for the meeting. During the meetings, the Committee provides a brief description of the topic (such as a new technology that may not be adequately identified by the current code) and then describes the technology or procedure through a formal presentation. Frequently, medical experts who perform the procedure make a presentation to describe the procedure and how it might be different from other procedures in the current code. Proposals are made to either continue capturing the procedure in the existing code, revise existing codes, or create a new code. The public then discusses the merits of the proposals and offers any alternate suggestions.

The ICD–9–CM is updated once a year, effective October 1. This date coincides with the annual updates to the DRGs within the inpatient hospital prospective payment system. Each spring we publish a proposed rule that includes proposed changes to the inpatient hospital prospective payment system. This notice also includes final decisions on changes to ICD–9–CM codes. By August 1, we publish the new codes in the Addendum to ICD–9–CM, which is a technical presentation of actual changes to be made in both the index and tabular sections of the ICD–9–CM coding books. The Addendum is available on CMS' website and is also sent to organizations such as the American Hospital Association (AHA) and the American Health Information Management Association (AHIMA) to distribute to their members. By October 1 of each year, the Department of Health and Human Services also produces a CD–ROM version of the ICD–9–CM, which may be purchased through the Government Printing Office. Since the ICD–9–CM is not a copyrighted system, many publishers and organizations distribute and sell books or other publications that include the changes to ICD–9–CM.

Although the Committee's process for discussing proposed changes to the ICD–9–CM fully involves and informs the public, the deliberative nature of the process does require some time. Topics discussed at the May and November 2000 meetings of the Committee are for changes to ICD–9–CM in October 2001. Therefore, depending on whether a request is considered at the May or November meeting, resulting changes may not be effective for approximately a year to a year-and-a-half later.

2. Options To Expedite the Implementation of Coding Changes

Several constraints upon the system would complicate implementing extensive changes. One significant complication is the interaction between the DRG system and the ICD–9–CM diagnosis and procedure codes (in the case of new services and technologies, the discussion focuses on procedure rather than diagnosis codes). When a new procedure code is created, a decision must be made as to whether the new code affects DRG assignment (for example, resulting in a case being assigned to a surgical rather than a medical DRG). Currently, new technology is generally assigned to the same DRG as its predecessor codes. Even if new codes do not affect DRG assignment, the GROUPER software (used to assign cases to DRGs) must be reprogrammed to recognize and classify all the new codes. This is necessary to allow Medicare's claims processing systems to process the claim.

In addition to the changes to the GROUPER software, implementing changes to ICD–9–CM codes is a detailed and far-reaching process involving modifications to code books and software coding systems, as well as changes to hospitals' claims processing systems. As described above, the current process is organized around the annual publication of coding changes in the **Federal Register** as part of the updates and changes to the inpatient hospital prospective payment system. The changes are made available during the summer, and communicated via multiple channels to hospitals. This process allows for the necessary processing changes to be thoroughly tested prior to implementation, both by CMS and by the hospitals. This testing procedure is essential given the volume (generally 11 million claims annually) and dollar impact (approximately $76 billion during FY 2002) of Medicare inpatient discharges.

Another important issue when considering expediting the process of making coding changes is that the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected (section 1886(d)(4)(C)(iii) of the Act). If ICD–9–CM changes were made at multiple times during the year, the budget neutrality requirement would mean the standardized amounts, and potentially the cost outlier thresholds, would change as well. These changes would compromise the prospective nature of the payment system, whereby hospitals are able to project their revenues for the year and plan accordingly. Because we do not believe the requirement in section 533 of Public Law 106–554 to explore ways to expedite coding changes was intended to disrupt the prospective nature of the payment system, we did not consider options that would require revising the DRG weights and the standardized amounts more than once a year.

With these considerations in mind, in the May 4, 2001 proposed rule, we explored the potential for shortening the current process.

First, we proposed to move the November meeting of the Coordination and Maintenance Committee to December. To move it further would disrupt the process for production of the annual inpatient prospective payment system regulation. This step would shorten the code assignment process by a month and permit coding changes resulting in payment changes to be implemented within a year.

Second, we proposed to expedite the process by issuing new coding decisions resulting from the spring meeting of the Committee (currently in May) that would be effective the following October 1. We also stated it may be necessary to move the May meeting to April to accommodate this change. Because the timing of this process would not allow the coding changes to be incorporated into the proposed rule published in the spring, cases with the new codes would have to be assigned to the same DRG to which they would have been assigned without the new code and no other payment adjustments would be possible. These coding changes would thus not affect the DRG weights or the budget neutrality calculations. However, more rapid introduction of new codes would permit reflection of the codes in claims data more quickly, and thus would permit eventual adjustment of payment rates sooner than otherwise possible. This capability could be of particular use where otherwise available data were not sufficient to support an immediate payment change, because hospital claims data permitting identification of use of the new technology would be available more quickly.

This proposed change would reduce the time between discussion of a proposed code and its implementation from a minimum of 11 months to 6 months. It would allow for the collection of MedPAR data a full year earlier than under the current process, providing the possibility that DRG revisions based on new codes could be expedited by up to 1 year.

As noted in the May 4, 2001 proposed rule, there would be significant challenges to making this proposed process work. Because the changes would not be included in the proposed rule published in the spring, the public would be given less opportunity to consider the merits of the proposals, and it would have to either attend the spring meeting of the Committee or respond to the summary report within a few weeks. The decisions from the spring meeting must be finalized by the middle of June in order for us to include the changes in the Addendum to ICD–9–CM and in order to make changes in the GROUPER software to be effective October 1; it may be necessary to schedule the spring meeting earlier to meet this deadline. The opportunity to solicit additional input from industry groups and experts would be curtailed because of the short time lines. There would be an increased risk of errors related to revisions in the procedure

code index (a manual process performed by CMS), as there would be less time available to review and revise the procedure index to ensure that all changes are accurately reflected.

For example, in the final rule published on August 1, 2001 (66 FR 40065), we created a new procedure code to capture percutaneous gastrojejunostomy (code 44.32). All coding instructions (indexing, inclusion terms, and exclusion terms) must be verified so that the procedure is appropriately indexed. If one of the many index entries for gastrojejunostomy is not correctly updated, percutaneous gastrojejunostomy would be assigned to another gastroenterostomy (code 44.39), which is an operating room procedure. This can have a significant impact on national health care data. Coders at different hospitals may follow different entries and arrive at different codes. To limit the potential for confusion in the hospital and coding communities resulting from two separate schedules for implementing code changes, we proposed to limit these changes to those that meet our definition of new technology eligible for special treatment as described below. Under the proposal, it would not be necessary, however, to demonstrate that the cases involving the new technology would be inadequately paid, since there would be no payment impacts of these changes.

The changes would be included in the Addendum to ICD–9–CM for the inpatient hospital prospective payment system, and placed on the website for use by the industry in updating books and software systems. They also would be published in the final rule, and included in the CD–ROM version of ICD–9–CM that is distributed by the Government Printing Office.

Comment: Comenters generally supported changing the ICD–9–CM Coordination and Maintenance Committee meetings from May and November to April and December each year. They believed this would provide a greater opportunity to have topics considered in a timely fashion. The commenters also supported implementing codes discussed at the April meeting the following October. Commenters recommended that all topics discussed at the April meeting be implemented the following October, and disagreed that these more rapid changes should be limited to new technologies. One commenter wrote that it would be confusing to implement procedural coding decisions from a single Coordination and Maintenance Committee meeting in two different years.

One commenter expressed concern regarding the scheduling of Committee meetings in December and April. The commenter was concerned that, by implementing code changes from the April meeting as part of the October updates, the proposed DRG assignments would not be included in the proposed rule usually published in the spring for the fiscal year that begins October 1. The commenter stated that this would be a major concern to the hospital industry because hospitals need time to comment on all proposed changes to the DRGs, analyze the changes for budgeting, train staff on coding changes, and implement software changes.

Response: We appreciate the support of the majority of the commenters that Committee meetings should be held in April and December of each year to expedite the revision of ICD–9–CM codes and are adopting the proposed change in the schedules as final. We will begin this revised schedule in calendar year 2002. The meeting scheduled for November 1 and 2, 2001, will be held as scheduled because many organizations have already planned their travel schedule around these days. The spring 2002 meeting is currently scheduled for April 18 and 19, 2002.

We also agree, based on the comments, that attempts should be made to include all proposals discussed and approved at the April meeting as part of code revisions the following October. This may not always be possible if additional issues are raised that require analysis and further research. Therefore, with the extremely short timelines from the April meeting to publication of the final addendum in June, we encourage those seeking new codes to submit complete documentation for consideration prior to the April meeting. We note that we are retaining the requirement that requestors must notify the Committee 2 months prior to the meeting in order to have an issue addressed.

We acknowledge the commenter's concern that, by implementing code changes discussed at the April meeting by the following October, there will not be the opportunity to propose DRG reclassifications associated with these new codes in the annual proposed rule published in the spring. Therefore, as stated above, these new codes will be assigned to (and paid according to) the same DRG as their predecessor technology. The DRG classifications of these new codes will be discussed in the annual final rule.

There will also be less time to communicate and prepare for the changes. Nevertheless, we believe the requirement to expeditiously incorporate new technology into the ICD–9–CM coding system necessarily entails tradeoffs.

Comment: One commenter questioned why new codes approved by the Committee at its April meeting could not be published in the proposed rule. The commenter noted that the proposed rule has not been published until May the last several years.

Response: The preparation of the proposed rule and the calculations associated with the proposed payment rates begin in January and February. In particular, if a code is being proposed for reassignment to another DRG, it is necessary to perform calculations of the payment effects of such a change to ensure budget neutrality. Therefore, even though the actual publication of the proposed rule may occur after the Committee's meeting has been held, it would not be possible to incorporate coding changes approved at the April meeting in time for publication in the proposed rule.

Comment: Commenters argued that a 23-month delay could still exist after new codes for new technologies are approved by the Committee before actual payment is available to hospitals for these new technologies. For example, if a new technology is introduced after the October deadline for consideration at the December ICD–9–CM Coordination and Maintenance Committee meeting, the earliest such a technology could qualify for special new technology payments under section 533 of Public Law 106–554 would be almost 2 years later, when a new ICD–9–CM code would become effective.

Response: The commenter is incorrect that payment would not be available to hospitals for a new technology until a new code is effective. After the Committee approves a new technology for an ICD–9–CM code, coders would assign the new technology to an appropriate existing code until such time as a new code, if necessary, could be established. Payment would be made in accordance with the DRG to which that existing code was assigned.

We believe that product sponsors will anticipate when their new products will come to market and begin the process of attaining a new code (if necessary) to coincide with the introduction of the product into the marketplace. That is, it is unlikely that a new product coming onto the market in November could not have been anticipated in time for consideration at the December Committee meeting (requests must be submitted by October for consideration at the December meeting). Therefore, we believe the actual time between the marketing of a new product and the

effective date of a new ICD–9–CM code to capture the associated procedure would generally be substantially less than 23 months.

Comment: Several commenters representing hospital groups strongly urged us to continue with annual updates to ICD–9–CM. They stated that more frequent code changes would be burdensome to hospitals. They further stated that ICD–9–CM changes require coding personnel to become familiar with the new codes and their systems, clinical data abstraction systems, laboratory systems, order-entry systems, as well as decision-support systems.

Commenters pointed out that some hospitals, especially small and rural hospitals, do not have automated encoding systems and coding personnel do not have access to the Internet. These hospitals utilize books to assign codes. They added that keeping up with a quarterly change in ICD–9–CM codes would be quite a challenge unless code book publishers adopted a quarterly update publication schedule. Several commenters stated that hospitals had great difficulty with the quarterly coding changes introduced with the outpatient hospital prospective payment system. Another commenter stated that the complexity associated with quarterly updates and billing requirements should be of utmost concern and must be avoided.

Other commenters representing medical technology manufacturers supported more frequent changes to ICD–9–CM. One commenter suggested that codes be changed twice a year, after each ICD–9–CM Coordination and Maintenance Committee meeting. The commenter believed that vendors that provide new technologies and the providers that use them would be motivated to accurately report any new codes as soon as possible. The commenter pointed out that the only constraint to issuing codes twice a year would be the need to update software programs such as the Clinical Data Editor which lists current ICD–9–CM codes. The commenter believed that because many software companies update their software quarterly, this should not be a problem.

Several commenters recommended that codes be updated quarterly. They believed this would lead to more rapid data gathering on new technologies. One commenter suggested that because DRGs are updated once a year, the new codes created on a quarterly basis be assigned to existing DRGs. Another commenter recommended updating the DRGs on a quarterly basis along with quarterly updates of ICD–9–CM codes.

Finally, a commenter emphasized the need to decouple the introduction of new codes from payment determinations. The commenter believed this will allow the expedited introduction of new codes without disrupting the prospectivity of the payment system.

Response: We agree that it is important to update ICD–9–CM in an organized and timely fashion. As some of the commenters suggested, coding changes have a great impact on other activities such as software development and coding book updates. When the codes are changed, all software using these codes must be updated. Code books would also have to be updated, at an expense to hospitals.

We understand the desire for more expeditious introduction of new codes from the perspective of tracking the data associated with new technology. However, we also understand the concerns expressed in the comments submitted by the hospital community with introducing new ICD–9–CM codes on a more frequent basis than annually. We believe the change to the ICD–9–CM Coordination and Maintenance Committee meetings discussed above appropriately balances these concerns. We will continue to pursue ways to further expedite the introduction of new codes.

Comment: Several commenters disagreed that the introduction of new codes and the assignment of those codes to DRGs at multiple times during the year would compromise the prospective nature of the payment system.

Response: Our statement in the proposed rule that changes to the ICD–9–CM codes at multiple times during the year would compromise the prospective nature of the payment system assumed these changes would affect the DRG assignment and, therefore, the payments for affected cases. We agree that, if the coding changes had no impact on payment, the principles of certainty and predictability that underlie the prospective payment system would not be compromised. However, as reflected in the previous comment and response, implementing new ICD–9–CM codes at multiple times during the year would be a labor-intensive, and thereby costly, undertaking for hospitals.

Comment: Some commenters recommended that the Committee hold three meetings a year. Other commenters that addressed this issue supported plans to hold two meetings a year.

Response: To date, the Committee has been able to sufficiently address requests by lengthening the time allotted for meetings as opposed to adding additional meetings. This has worked well in the past. Should the need arise, we will consider scheduling a third meeting. For now, we plan to hold only two meetings a year.

Comment: Several commenters supported the open process involved with the ICD–9–CM Coordination and Maintenance Committee. They also supported the continuance of this process.

Response: We agree that the open process involved with the Committee has worked well. These open meetings allow the public to fully evaluate proposed changes to ICD–9–CM. Those participating in the meetings have brought expertise in coding, medicine, data systems, as well as code book preparation to the discussions. This has consistently led to useful changes to the coding system. Frequently, these discussions lead to alternate suggestions on how to resolve coding problems. We will continue this open process for updating ICD–9–CM.

Comment: One commenter suggested that procedures associated with a new technology for which the Food and Drug Administration (FDA) has issued an ''approvable letter'' should be provided an ICD–9–CM procedure code. According to the commenter, the FDA may issue an approvable letter setting forth the actions that must be taken before final approval.

Response: One of the questions asked by participants at the Committee meetings is whether or not the procedure is investigational. The public participants tend to oppose the creation of new codes for relatively new, unproven procedures. They usually recommend waiting to see how widespread the technology will become. Because of space limitations in the code book, the public participants tend to recommend waiting to see if the device or procedure is approved by the FDA. We will continue to discuss new procedures at the Committee meetings. On occasion, we may discuss procedures or devices that are under FDA investigation. As is currently the case, public participants at the meetings will be given the opportunity to discuss whether or not the code is needed.

3. Limitations of ICD–9–CM

While the updating process currently in use may not lend itself to expeditiously incorporating new medical services and technologies into the ICD–9–CM coding system, another important factor is the dated and limited structure of the ICD–9–CM system. The ICD–9–CM system was developed in the 1970s and implemented in 1979.

Dramatic advances have occurred in medicine since that time. Although the ICD–9–CM Coordination and Maintenance Committee has attempted to make coding modifications to capture new technology, it has sometimes been difficult to achieve a reasonable result.

The ICD–9–CM procedure codes are made up of four digits: two numerical characters followed by a decimal, and then two additional numerical characters. The first two digits indicate a category, such as 36—Operations on the vessels of the heart. The third digit provides additional breakdown, such as 36.0—Removal of coronary artery obstruction and insertion of stents. When the fourth digit is added, the code is fully described. There are only 10 codes available within each category (fourth digits 0–9). Once a category is full, we must either combine types of similar procedures under one code, or find a place in another section of the code book for a new code. The benefit of such a system is that we can collapse the codes into categories when analyzing claims data to capture a wide range of similar procedures. However, if similar codes are placed in separate sections of the code book, coders may not easily find them. Errors may occur when trying to identify particular types of cases when codes are not carefully placed within a system such as the current ICD–9–CM.

ICD–9–CM is 22 years old and the premises on which the coding system was established are dated. A number of approaches and techniques used for procedures such as lasers and the use of scopes were not anticipated when the structure of ICD–9–CM was developed. Consequently, the basic categories were established on technology that is now outdated. Making needed coding changes each year has been quite difficult and involves making compromises that effect the precision of the coding.

4. Short-Term Solutions Within the ICD–9–CM Structure

To consider how we might better respond to requests for new codes in the short term, we examined ICD–9–CM to attempt to identify an open series of codes that could be used for new procedures and technologies. There are currently 16 categories of procedure codes. However, codes 17.00 through 17.99 are not in use. These codes are found between category 3, ''Operations on the Eye,'' and category 4, ''Operations on the Ear.'' This series of 100 codes could be used to provide codes for new procedures and technology. To fully utilize this new series of codes, we would assign new procedures to the next available code.

A limitation of this approach would be that this category would capture a diverse group of procedures potentially affecting all body systems. Assigning diverse procedure codes to this category would undoubtedly create considerable confusion for coders. Currently, procedures are grouped by body system, and similar procedures are placed in categories. This arrangement assists the coder in choosing the most appropriate code because he or she can quickly review closely related codes that are together. Using category 17 for new technology codes, on the other hand, would mean that closely related codes would be widely separated.

Use of category 17 would also require a major revision of coding rules since coders are taught to identify codes within a group of similar procedures. They are not accustomed to looking for a list of unrelated procedures in a separate section of the coding book.

To supplement the category 17 codes, the Coordination and Maintenance Committee may be able to assign vacant codes in other categories. However, large numbers of sequences are already fully or nearly fully occupied, and this strategy would only provide limited availability of new codes.

Comment: Several commenters supported the need to develop short-term solutions to the limitations of ICD–9–CM. They generally supported creating a new series of codes in category 17 of ICD–9–CM for new technologies. However, some commenters stressed the need to assign new codes to the appropriate place in the body of ICD–9–CM as the first priority. They believed this will maintain the structure of ICD–9–CM and reduce confusion. They recommended that only when unused codes within the appropriate section of ICD–9–CM are not available should category 17 codes be used.

One commenter pointed out another series of unused procedure codes: the codes in category 0 (codes 00.00 through 00.99). The commenter suggested using these codes when slots are not available in the appropriate section of ICD–9–CM. The commenter further recommended that we use codes from category 0 prior to using the codes in category 17.

Response: We agree with the commenters that new codes should be created in the appropriate section of ICD–9–CM as a first priority. Only when there are no available slots in other chapters should codes be created in category 17. We also agree that using codes 00.00 through 00.99 is an excellent idea. Using these two empty categories would create 200 available slots for new codes. We will discuss this issue as part of the ICD–9–CM Coordination and Maintenance Committee meetings.

Comment: One commenter supported the use of category 17 of ICD–9–CM for new procedures, but pointed out that ICD–9–CM was designed to report the procedure performed, not the device or other specific technology used. The commenter went on to state that ICD–9–CM was never intended to report information on a single procedure reflecting a single technology or a single manufacturer's technology. The commenter also suggested that if new codes were created for individual devices instead of groups of similar procedures, the available empty codes would be quickly used up.

Response: We agree with the commenter that ICD–9–CM should continue to develop new codes for new types of procedures. We do not believe it should be converted to a system which tries to identify all new devices created by individual manufacturers. We believe the ICD–9–CM Coordination and Maintenance Committee should continue to evaluate the merits for requests for new codes and consider them in the context of the structure and limitations of ICD–9–CM.

5. Alternative Short-Term Approaches

Some observers have expressed concern that the additional codes available within the ICD–9–CM code set may not be adequate to accommodate both routine changes in coding and the new technologies under consideration, particularly if a long-term change, such as adoption of ICD–10—Procedure Coding System (ICD–10–PCS), is significantly delayed. We have examined several alternative short-term options in the event the additional available codes are used before a long-term solution is reached. In evaluating these alternatives, we must consider the changes each entails to hospitals' and CMS' coding and claims processing systems, and the time necessary to implement such changes (balanced against the timeframe for adopting a long-term coding solution).

Expanding ICD–9–CM procedure codes by making them alphanumeric or adding a fifth digit would make available a substantial number of new codes for new technology but would require substantial system changes and create standards issues. This approach was extensively discussed in meetings of the ICD–9–CM Coordination and Maintenance Committee prior to the development of ICD–10–PCS. Input from the public indicated that such a

significant modification to a limited and dated system would only make the system worse. The time it would take to make this system work well would be longer than that required to build a new system and the resources needed for system changes would be significant. Such a modification of the ICD–9–CM standard code set would require the formal standards modification and adoption process prescribed by the regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

Using the V-code section of ICD–9–CM diagnosis codes to report new technology would not require any systems changes or create any standards issues and would create a moderate number of codes for new technology. We have discussed this recommendation with NCHS. NCHS opposed this option as an inappropriate use of diagnosis codes. While ''V'' codes are used for the classification of factors influencing health status and contact with health services, they are not a substitute for procedure coding. By adding procedure coding concepts to the diagnosis coding system, confusion could easily lead to increased errors. Furthermore, the V-code section has only a limited number of available spots.

We also considered using HCFA (the Health Care Financing Administration was recently renamed the Centers for Medicare & Medicaid Services (CMS)) Common Procedure Coding System (HCPCS) codes to report use of new technology for inpatient cases. However, using HCPCS would require a moderate amount of systems change and would require the formal standards modification and adoption process prescribed by Public Law 104–191, since the HCPCS code set is not the standard code set prescribed for inpatient services. However, it would make a substantial number of codes available for new technology. Alphanumeric HCPCS codes are currently used in outpatient departments and physician offices for reporting services, and they are used on a limited basis by hospitals in reporting the use of hemophilia clotting factors used during an inpatient stay.

Use of HCPCS codes would require that a new service or technology either be assigned a code through otherwise applicable processes for HCPCS coding or that CMS assign a specific, temporary code for use in connection with new technology payments for inpatient hospital services. Specifically assigned codes could be assigned relatively quickly. However, use of such codes would run the risk of confusion if other codes were assigned to the same service or items when used in other settings. More generally, HCPCS coding would duplicate information found in the ICD–9–CM procedure codes. Careful attention to integration of coding across the two systems would be necessary, and dissemination of information about correct coding to hospital coders would present challenges. Even with excellent integration and dissemination, the risk of confusion by hospital coders would be high.

The use of HCPCS codes would also raise questions on how the accuracy of claims data will be assessed. CMS contracts with Peer Review Organizations to validate the accuracy of coded data. Consideration would need to be given to how the accuracy of these data could be verified. If two separate coding systems with overlapping information are used, considerable variations in reporting practices might arise.

Similar to the option of using alphanumeric ICD–9–CM procedure codes, changes in systems and in hospital coding procedures that would be associated with this approach would take time and resources to implement for hospitals, CMS, and potentially other payers such as Medicare secondary insurers.

In recognition of these considerations, we proposed not to proceed with use of HCPCS codes for this purpose at the present. We believed this possibility should be revisited later if the ICD–9–CM codes in fact prove inadequate and if a longer term solution is not yet available. However, we solicited public comments on the concept of using HCPCS codes to identify specific new technologies on inpatient hospital claims.

Comment: One commenter suggested that V codes be used in combination with existing procedure codes to act as a flag and differentiate the new technology procedures from the old procedures. The commenter suggested that the following new V codes be created to identify new technology:

V00 Admission/Encounter for New Technology Procedures

The following categories would be used to identify new technology:

V00.0 New Technology—Drugs
V00.1 New Technology—Musculoskeletal/Integumentary
V00.2 New Technology—Respiratory, Nose, Throat
V00.3 New Technology—Cardiovascular
V00.4 New Technology—Digestive System
V00.5 New Technology—Urinary
V00.6 New Technology—Genital System/Male and Female
V00.7 New Technology—Nervous System
V00.8 New Technology—Eye, Ear
V00.9 New Technology—NEC/NOS

The commenter suggested that we use these codes beginning October 1, 2001. If this were not possible, the commenter suggested that we implement the codes after discussion at the next meeting of the ICD–9–CM Coordination and Maintenance Committee.

Another commenter opposed the use of V codes as a way of supplementing the procedure codes. The commenter believed that this was an inappropriate use of diagnosis codes. The commenter stated that the ICD–9–CM diagnosis codes have space constraints as well. The commenter suggested that it is possible that there might not be sufficient available codes to meet the need for new procedure codes, but using available V codes for procedures would seriously restrict the ability to create new diagnosis codes when necessary.

Response: The use of V codes for new technology is on the agenda to be discussed at the November 1, 2001 meeting of the ICD–9–CM Coordination and Maintenance Committee. The NCHS is responsible for the diagnosis part of the meeting. However, it should be mentioned that previous discussions at the meeting have not been supportive of proposals such as this. This use of diagnosis codes to help identify procedures or technologies is contrary to the usual structure and content of ICD–9–CM diagnosis codes.

Moreover, it would not be possible to implement the use of V codes as recommended by the commenter on October 1, 2001. The addendum to ICD–9–CM, which lists code revisions, has already been distributed. Software vendors and publishers have already begun preparing their coding products. We believe the Committee should continue its open process of discussion of code revisions in this regard. To implement a code change without providing the public an opportunity to comment would not be consistent with that process.

Comment: One commenter opposed expanding ICD–9–CM procedure codes by making them alphanumeric or adding an additional digit. The commenter believed that this approach would be difficult and costly to implement. The commenter also stated that it would essentially convert ICD–9–CM into a new coding system, and thus the system would not be a ''short-term'' approach, as it would have to undergo

the formal standards modification and adoption process of Public Law 104–191. In addition, the commenter stated that, if a new procedure coding system is going to be formally adopted through the standards modification and adoption process, it should be ICD–10–PCS, which is a significant improvement over ICD–9–CM.

Response: We agree with the commenter's explanation for why it would be unwise to initiate a process of modifying ICD–9–CM procedure codes involving the use of alphanumeric characters or the addition of digits, as this effort would utilize extensive resources and offer few overall improvements.

Comment: Several commenters supported our proposal not to use HCPCS codes for inpatient claims. The commenters stated that hospitals have had great difficulty with the quarterly coding changes introduced with the outpatient prospective payment system. One commenter stated that some hospitals have not been able to keep their systems current with the onslaught of HCPCS coding changes, especially the device pass-through C-codes. The commenter also stated that many hospitals have separate coding staffs for inpatient records and for outpatient records. The commenter further stated that introducing HCPCS coding into the inpatient Medicare reporting system would create significant burdens and training issues and that there would also need to be information system changes to activate the HCPCS codes.

Another commenter opposed the use of both HCPCS codes and CPT codes on inpatient claims. The commenter stated that the use of another procedure coding system in addition to ICD–9–CM for inpatient claims increases the complexity and destroys clinical analysis capability of the DRG system.

Several commenters supported using HCPCS codes as procedure codes in the inpatient hospital setting. One commenter urged CMS to adopt the same process it uses for the outpatient hospital prospective payment system, in order to expedite the assignment of temporary new technology codes that qualify for additional payment under the inpatient hospital prospective payment system.

One commenter supported the use of level two of HCPCS codes for new technology, but not for all medical services and technology. The commenter stated that the best approach would be to use a combination of HCPCS and ICD–9–CM procedure codes to report new medical services and new technologies. The commenter supported the continued use of ICD–9–CM procedure codes for any new service or technology that represents a new procedure. However, if the new service or technology represents an item, drug, or device, as opposed to a procedure, then a HCPCS code should be assigned. This commenter did not support the use of temporary HCPCS codes (for example, G codes) in connection with new technology payments for inpatient hospital services, as this could result in duplicative or overlapping codes among different coding systems. The commenter recommended that new items, drugs, or devices meeting the definition of new technology should be assigned a HCPCS code through the usual HCPCS process. Consideration should also be given to the feasibility of implementing new HCPCS codes more frequently than once a year. The commenter also stated that a number of payers already report HCPCS codes in Form Locator 44 on the billing form (UB–92). The commenter recommended that CMS approach the National Uniform Billing Committee to explore this option.

Response: We agree that introducing HCPCS coding into the inpatient system as a solution to limitations with ICD–9–CM would be burdensome to hospitals and increase the complexity and confuse the logic of the inpatient hospital coding scheme. In addition, HCPCS codes could not be used for reporting diagnosis and treatment of hospital inpatients unless and until the HCPCS code set was formally adopted under the modifications and adoption procedures required for national standards under Public Law 104–191. As noted above, using categories 0 and 17 of ICD–9–CM appears to offer workable short-term solutions. As discussed below, a longer term solution is the adoption of a more flexible coding system such as ICD–10. Therefore, we are not introducing the use of HCPCS codes for inpatient use at this time.

Comment: One commenter recommended that we require the use of Universal Product Numbers (UPNs) as a means of reporting all new medical devices qualifying as new technologies. The commenter mentioned that there are currently two industry standards with different formats for UPN codes. The commenter recommended that both of these formats be accepted, and added that the UPNs would facilitate the use of a bar code that would assist in ordering, tracking, and validating inventory. The commenter also stated that the use of UPNs would substantially reduce administrative costs. The commenter recommended that UPN codes be incorporated into the existing ICD–9–CM coding system—the ICD–9–CM procedure code descriptor would identify the procedure and the UPN code would then make clear which products qualify as new technologies.

Response: We have been exploring the use of UPN codes for ambulatory bills. Since this coding system is not currently in widespread use, it was not selected as one of the national standards for medical coding under Public Law 104–191. If UPN codes were to be implemented, they would first have to be evaluated under the standards modification and adoption procedures for designating national standards under Public Law 104–191. Designating any new coding system as a national standard is a lengthy process that involves public discussions as well as proposed and final rulemaking. We will continue our process of evaluating UPN codes as a future national coding standard.

6. Development of ICD–10–PCS; A Possible Long-Term Solution

While acknowledging the limitations of the ICD–9–CM coding system, the Secretary designated the ICD–9–CM coding system as the national standard for reporting, among other things, diagnosis and treatment of hospital inpatients, in a final rule published in the **Federal Register** on August 17, 2000 (65 FR 50311), following notice and comment rulemaking in accordance with Public Law 104–191. In that same final rule, the public was advised that ICD–10–PCS has great promise as a future replacement of ICD–9–CM. However, it was also noted that ICD–10–PCS, at that time, required additional testing and revision prior to a decision on whether to use it as a national standard. At that time, work was proceeding on an updated variant of the ICD system, ICD–10, that could replace ICD–9–CM, but this system was not yet completed. The World Health Organization developed ICD–10 as an international diagnosis coding system. NCHS has been modifying ICD–10 to replace the diagnosis section of ICD–9–CM. This system is being referred to as ICD–10–CM. At the same time, CMS has been developing the ICD–10–PCS as a possible replacement for the ICD–9–CM procedure codes.

Criteria for the development of a new procedure coding system were established in 1993 by the National Committee on Vital and Health Statistics (NCVHS) in a report concerning recommendations for a single procedure classification system. The criteria included the following:

- Completeness—all substantially different procedures have a unique code.

• Expandability—the structure of the system allows incorporation of new procedures and technologies as unique codes.

• Standardized terminology—the coding system includes definitions of the terminology used. While the meaning of the specific words can vary in common usage, the coding scheme does not include multiple meanings for the same term. Each term is assigned a specific meaning.

• Multiaxial—the system has a multiaxial structure with each code character having the same meaning within the specific procedure section and across procedure sections to the extent possible.

• Diagnostic information is not included in the procedure description.

Using these criteria, CMS developed the ICD–10–PCS through a contract with 3M Health Information Systems. The ICD–10–PCS system provides much greater code capacity because all substantially different procedures have a unique code. While the ICD–9–CM procedure coding system is limited to a maximum of 10,000 codes, the current draft of ICD–10–PCS contains 197,769 codes and the number could be expanded further.

7. Public Meeting on Implementing ICD–10–PCS

The Department of Health and Human Services is starting the process of soliciting public comments on whether it should proceed to adopt ICD–10–PCS as the national standard for coding inpatient hospital services to replace the ICD–9–CM procedures code set. A public meeting on this issue was held May 17, 2001, in the CMS Auditorium in Baltimore, Maryland. The complete report summarizing the results of that meeting, including the presenters' position papers, can be found at: *http://www.hcfa.gov/medicare/icd9cm.htm*. The public was encouraged to attend and participate in the discussion on whether ICD–10–PCS should become a national standard. Organizations and groups were given the opportunity to make a brief presentation on their members' behalf.

Comment: Several commenters supported the ICD–10–PCS as a long-term solution for replacing the ICD–9–CM. One commenter noted the number of interested parties during the May 17, 2001 ICD–9–CM Coordination and Maintenance Committee meeting who endorsed ICD–10–PCS. Other commenters suggested that we coordinate the implementation of ICD–10–PCS at the same time as the ICD–10–CM diagnosis code set. One commenter objected to the potential adoption of ICD–10–PCS.

Response: We agree that ICD–10–PCS is the best long-term solution to replace ICD–9–CM. As mentioned earlier, organizations were given the opportunity to submit a position paper and make a presentation on this issue. Several organizations requested the opportunity to present on this issue. The position papers developed are posted as part of the Summary Report of the ICD–9–CM Coordination and Maintenance Committee. The presenters' remarks summarized these position papers. The following are excerpts from the position papers.

''ICD–10–PCS represents a significant improvement over ICD–9–CM and substantially meets the characteristics of a procedural coding system outlined by the NCVHS as described above. ICD–10–PCS also meets all of the HIPAA requirements outlined earlier * * * Replacement with a new procedural coding system for inpatient services is absolutely necessary and ICD–10–PCS meets the criteria for such a replacement system.''

American Health Information Management Association

''AHA has worked closely with institutional members in the field-testing of ICD–10–PCS. The field-testing results are very positive. Results indicate that ICD–10–PCS can easily accommodate the expansion of new procedure codes. Coders working with ICD–10–PCS also found the new system to be efficient, logical, and easy to understand and learn * * * Based on the testing, the new procedure classification system holds a great deal of promise and should be considered for future use * * * Therefore, the AHA supports the HIS industry in requesting that ICD–10–PCS implementation be carried out in tandem with the migration to ICD–10–CM.''

American Hospital Association

''Our position is that ICD–9–CM is not adequate for long-term future use and that providers, payers, and Medicare beneficiaries would be well served by a conversion to ICD–10–PCS.''

Federation of American Hospitals

''Based on AMA's support for the elimination of complex regulatory burdens mandated by the Medicare program, the AMA does not support the adoption of ICD–10–PCS. The AMA believes that the implementation of ICD–10–PCS will only add to the regulatory burden faced by physicians and other health care providers. ICD–10–PCS is a substantial departure from ICD–9 and from all existing health care code sets. As a result, it would require significant resources to implement and problems inherent in the system suggest that it may not be worth the cost.''

American Medical Association

''ASHA appreciates having had the opportunity to provide input on the development of this system and is pleased to see that many of our recommendations have been incorporated into the final version of the ICD–10–PCS * * *. Again, ASHA supports the implementation of the ICD–10–PCS as a replacement for Volume 3 of the ICD–9–CM.''

American Speech-Language Hearing Association

''AdvaMed supports the rapid adoption of the International Classification of Disease, Procedural Coding System, 10th Edition (ICD–10–PCS), for use in hospital inpatient billing* * *It is a system that has been developed over the past decade with substantial input from the clinical community and offers tremendous versatility in describing the differences in the use and characteristics of medical technologies.''

AdvaMed

''The transition from ICD–9–CM to ICD–10–PCS will help enhance the quality of care available for Medicare beneficiaries and provide better management tools for healthcare professionals * * * ICD–10–PCS should be implemented to bring our coding system up to the standards of the rest of the world, to improve our ability to understand the impact on procedure and technology selection on patient outcomes, and to provide better options for paying hospitals appropriately for the care they provide.''

Medical Technology Partners

''Importantly, ICD–10–PCS has the capacity to grow as medical science grows * * * ICD–10–PCS may have the flexibility and durability to span this century—a statement that cannot be made about any other medical coding system currently proposed or in use. A coding system that could be updated decade after decade would provide an unprecedented continuity of medical data.''

Ingenix Syndicated Content Group

''We believe that the ICD–10–PCS fulfills these criteria, and we urge the Health Care Financing Administration to implement the ICD–10–PCS as a national standard for coding inpatient procedures as quickly as possible.''

Princeton Reimbursement Group

The only organization presenting at the meeting that did not support the adoption of ICD–10–PCS as the national standard for inpatient procedure coding was the American Medical Association.

While it is widely acknowledged that the ICD–9–CM diagnoses and procedures coding system is dated, we are not yet ready to begin the final decisionmaking process as to which coding system will become the next national standard. The NCHS has not yet completed the final draft of ICD–10–CM diagnosis code set. While CMS has completed ICD–10–PCS and held public meetings on its possible implementation, we are not yet ready to proceed with making final recommendations. CMS believes that further action on naming new coding systems should not begin until NCHS has completed ICD–10–CM. Most

organizations commenting on this topic want decisionmaking action deferred until both systems are complete. At that time, the formal standards modification and adoption process will begin, to determine if both ICD–10–CM and ICD–10–PCS should be implemented as new standards and whether they should be implemented at the same time.

The May 4, 2001 proposed rule stated that implementation of ICD–10–CM and ICD–10–PCS could not occur before October 2003. Linking the ICD–10–PCS implementation date to ICD–10–CM could postpone such implementation well beyond 2003. To date, there has not been any public evaluation of or testimony on ICD–10–CM. In addition, ICD–10–PCS and ICD–10–CM could not be used for reporting diagnosis and treatment of inpatients until those code sets were formally adopted under the national standards modification and adoption process of Public Law 104–191. Those procedures are very involved and the process can be very lengthy.

8. Methods of Expeditiously Incorporating New Medical Services and Technologies Into the Coding System

In summary, we are developing a two-part strategy for expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services. First, we are shortening the timeframe for implementing new codes by processing changes without first publishing them in the proposed rule in the spring. This means new codes approved at the spring meeting of the ICD–9–CM Coordination and Maintenance Committee could be implemented by October of the same year, although the DRG assignment for these new codes would initially be the same as the predecessor technologies. We also are moving the November meeting to December (and the May meeting to April, to allow more time to implement decisions from the spring meeting by October). These changes will reduce the time it currently takes to implement new codes, as well as reduce the time required to collect data through the MedPAR by up to a year in many cases.

Second, to make more codes available to identify new technology, we will begin immediately to work with the public to use categories 0 and 17 of ICD–9–CM procedures. This will provide room for 200 additional procedure codes. We also will continue the current process of adding and revising codes within the current categories as room and structure allow. Our long-range strategy is to consider the implementation of the ICD–10–PCS and ICD–10–CM code sets as replacement systems for ICD–9–CM. However, because such a change would require proceeding in accordance with the standards modification and adoption process under Public Law 104–191, in addition to the need to revise both our payment systems and those of hospitals, this would be a lengthy process.

IV. New Requirements Relative to New Services and Technologies

Section 533(b) of Public Law 106–554 amended section 1886(d)(5) of the Act to add new subparagraphs (K) and (L) to address a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. Under new section 1886(d)(5)(K)(i) of the Act, effective for discharges beginning on or after October 1, 2001, the Secretary is required to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment system. New section 1886(d)(5)(K)(ii)(I) of the Act specifies that the mechanism must apply to a new medical service or technology if, ''based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges * * * is inadequate.'' New section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment).

New sections 1886(d)(5)(K)(ii) through (vi) of the Act further provide—

- For an additional payment for new medical services and technology in an amount beyond the DRG prospective payment system payment rate that adequately reflects the estimated average cost of the service or technology.
- That the requirement for an additional payment for a new service or technology may be satisfied by means of a new-technology group (described in new section 1886(d)(5)(L) of the Act), an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge.
- For the collection of data relating to the cost of new medical services or technology for not less than 2 years and no more than 3 years after an appropriate inpatient hospital services code is issued. The statute further provides that discharges involving new services or technology that occur after the collection of these data will be classified within a new or existing DRG group with a weighting factor derived from cost data collected for discharges occurring during such period.

In the May 4, 2001 proposed rule, we included a discussion of how we proposed to implement the provisions of section 533(b) of Public Law 106–554 (66 FR 22693). This final rule establishes a mechanism to implement those provisions.

A. Criteria for Identifying New Medical Services and Technology

New section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (For convenience, hereafter we refer to ''new medical services and technology'' as ''new technology.'') In the May 4, 2001 proposed rule, we proposed that a new technology would be an appropriate candidate for an additional payment when, in the judgment of the Secretary, it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (proposed § 412.87(b)(1)). This proposed criterion was intended to ensure that new technology can be demonstrated to provide a substantial clinical improvement based on verifiable evidence. In the May 4, 2001 proposed rule, we proposed to make determinations regarding which new technologies meet this criterion using a panel of Federal clinical and other experts, supplemented as appropriate with outside expertise. As explained below, we also proposed that new technologies meeting this clinical definition must also be demonstrated to be inadequately paid otherwise under the DRG system to receive special payment treatment (proposed § 412.87(b)(3)). New technologies that do not meet these proposed standards would be paid through other applicable DRG payments. These payments would be recalibrated over time to reflect the actual use of the new technologies.

In addition to the clinical and cost criteria, we proposed that, in order to qualify for the special payment treatment provided under new section 1886(d)(5)(K)(ii)(I) of the Act, a specific technology must be new (proposed § 412.87(b)(2)). We believe the new provision contemplates the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the

DRG weights through recalibration (generally 2 years). Specifically, new section 1886(d)(5)(K)(ii)(II) of the Act states that the Secretary must ''provide for the collection of data with respect to the costs of a new medical service or technology * * * for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology.'' In addition, new section 1886(d)(5)(K)(ii)(III) states that the Secretary must ''provide for additional payment to be made * * * with respect to discharges involving a new medical service or technology described in subclause (I) that occur during the period described in subclause (II) in an amount that adequately reflects the estimated average costs of such service or technology.''

We also proposed in the May 4 proposed rule that the results of all determinations would be announced in the **Federal Register** as part of the annual updates and changes to the inpatient hospital prospective payment system (proposed § 412.87(b)(1)). In addition, we noted that this determination is separate and distinct from the coverage decision process.

We solicited comments on these proposals. In particular, given that this process is the result of new legislation with possibly major implications for the hospital inpatient prospective payment system, we invited public comment on: Our definition of new medical services and technologies; the use of Federal clinical and other experts to make determinations regarding which criteria meet our definition of a new service or technology; the information necessary to determine whether payment would be inadequate; and our payment mechanism (see the following discussions for these latter two issues).

Comment: Commenters argued that our proposed rule did not establish a clear means whereby new technologies may qualify for additional payments to be effective for discharges occurring on or after October 1, 2001. These commenters believed that section 533 of Public Law 106–554 requires new technologies to be identified and special payments to be made at that point.

Several commenters argued that particular new technologies should be recognized for special payment under this provision beginning October 1, 2001. On the other hand, a commenter representing hospitals encouraged us to proceed carefully and deliberately.

Response: Although we are establishing the methodology by which new technologies may become eligible for special payments in this final rule, we will not make additional payments under the methodology during FY 2002. This is due to the timing of the enactment of Public Law 106–554 on December 21, 2000, the requirement that we establish the mechanism through notice and an opportunity for public comment, and the requirement that the payments be implemented in a budget neutral manner. That is, it was not feasible to establish the criteria by which new technologies would qualify through a proposed rule with opportunity for public comment as part of the May 4, 2001 proposed rule, finalize those criteria in response to public comments, allow technologies to qualify under those criteria, and implement payments for any qualified technologies in a budget neutral manner. Making the special payments in a budget neutral manner requires an adjustment to the standardized amounts (which must be published in final by August 1 each year) that we use to pay acute care hospitals under the prospective payment system.

It was not possible to establish a process through proposed and final rulemaking, whereby new technologies could qualify for this special payment provision, prior to publishing a proposed rule for FY 2002. As noted previously, Public Law 106–554 was enacted on December 21, 2000. We are required to publish our proposed rule updating the standardized amounts and including other changes to the hospital inpatient prospective payment system by April 1 of each year, and to publish a final rule by August 1 of each year.

We did, however, carefully evaluate all technologies of which we were aware, including those submitted for consideration during the public comment period on the May 4, 2001 proposed rule, that might seek designation as ''new'' under this provision. All of those that were submitted during the public comment period were previously existing technologies with data already available in the MedPAR file. Therefore, they would not be eligible under our criterion to be considered new. Of new technologies that we considered prior to publication of the proposed rule, none submitted data we believe were sufficient to document that the technology would be inadequately paid under existing DRGs. However, one new technology, intravascular brachytherapy, was assigned to a higher weighted DRG based on the clinical characteristics of the procedure.

Comment: A number of comments addressed our proposed eligibility requirements for a medical service or technology to qualify as ''new technology''. Several commenters were concerned that the criteria were too vague and subjective to be implemented. Specifically, commenters took issue with the ''substantial improvement'' requirement, stating that the statute does not require such a stringent test and that the term is too subjective and cumbersome to administer properly.

The Medicare Payment Advisory Commission (MedPAC), which stated it was in general agreement with the criteria overall, commented that it would be difficult to operationalize the ''substantial improvement'' criterion, which makes judgements about the extent to which a given technology improves diagnosis or treatment. Another commenter suggested rewording the criterion to say ''substantial differences'' and stated that these differences should be measured based on diagnostic or therapeutic effects.

Other commenters, representing national associations of hospitals, supported our proposed criteria for identifying new technology, although one commenter also expressed reservations about the ambiguity of the ''substantial improvement'' criterion.

Response: As stated previously, we proposed the ''substantial improvement'' criterion to limit these special payments for those technologies that afford clear improvements over the use of previously available technologies. We believe the special payments for new technology established by this final rule should be limited to those new technologies that have been demonstrated to represent a substantial improvement in caring for Medicare beneficiaries, such that there is a clear advantage to creating a payment incentive for physicians and hospitals to utilize the new technology. Where such an improvement is not demonstrated, we continue to believe the incentives of the DRG system provide a useful balance to the introduction of new technologies.

In that regard, we would point out that various new technologies introduced over the years have been demonstrated to have been less effective than initially thought, or in some cases even potentially harmful. We believe it is in the best interest of Medicare beneficiaries to proceed very carefully with respect to the incentives created to quickly adopt new technology.

Therefore, we are adopting our proposed requirement that a new technology must represent a substantial improvement, and are clarifying the way it will be applied. We will evaluate a request for special payment for a new

technology against the following criteria in order to determine if the new technology meets the substantial improvement requirement:

• The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.

• The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.

• Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

◆ Reduced mortality rate with use of the device.

◆ Reduced rate of device-related complications.

◆ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

◆ Decreased number of future hospitalizations or physician visits.

◆ More rapid beneficial resolution of the disease process treatment because of the use of the device.

◆ Decreased pain, bleeding, or other quantifiable symptom.

◆ Reduced recovery time.

We will require the requester to submit evidence that the technology meets one or more of these criteria. We note that these criteria are not intended for use in making coverage decisions under section 1862(a)(1)(A) of the Act.

Comment: Several commenters requested that we clarify the time period in which a technology would be considered new for purposes of qualifying for this special add-on payment. The commenters noted that proposed § 412.87(b)(2) states that '' [a] medical service or technology may be considered new within 2 or 3 years after it becomes available on the market * * *.'' The commenters argued that this requirement should be clarified to state that the 2-year to 3-year period begins with the assignment of an appropriate tracking code, not the point at which the technology becomes available on the market. Several commenters indicated that this would enable previously existing technologies to qualify if they receive a new code that better enables tracking of their data.

Response: The 2-year to 3-year period referenced in section 1886(d)(5)(K)(ii)(II) of the Act is the time that is required for discharge data associated with a new technology to be reflected in the DRG weights. Therefore, the most appropriate point to begin the period during which a technology may be considered new is the point at which the technology becomes available on the market and the ICD–9–CM code issued by the ICD–9–CM Coordination and Maintenance Committee becomes effective. The 2-year to 3-year time period provided under the Act recognizes the lag between market approval and a new ICD–9–CM code becoming effective.

Technology will no longer be considered new after the point at which data begin to become available reflecting the code assigned to the technology by the Committee. We do not believe it would be appropriate to consider technologies that have been on the market for more than 2 or 3 years for approval under this provision on the basis that the Committee subsequently issues a more precise procedural code. Data reflecting the costs of these technologies are already available in the MedPAR data. We would, however, continue our past practice of evaluating whether existing procedures are appropriately classified to a DRG. To the extent the introduction of a new code for existing technology helps to better identify higher costs associated with a procedure, we would work to expedite the appropriate assignment of that code (for example, using more recent MedPAR data).

Comment: Several commenters objected to our proposal to consult a Federal panel of experts in evaluating new technology under the ''substantial improvement'' criterion. One commenter referred to the panel as an unnecessary layer of bureaucracy that should be eliminated. The commenter believed the panel would be unnecessary and that CMS should automatically deem drugs and biologicals approved by FDA through its ''fast-track'' processes as new technology.

A number of commenters requested further details regarding the composition of the panel and its review process. They requested that CMS establish clear timelines on when the panel will review applications for new technologies and publish these timelines on the CMS website. The commenters further stated that meetings of the panel should be open to the public and the meeting date and agenda announced in advance, with technology sponsors allowed to present their request at the meetings. The commenters also requested that a reconsideration process be established.

Response: The role of the Federal panel will be to evaluate whether a new technology represents a substantial improvement in the diagnosis or treatment of Medicare beneficiaries. Because there is not another body currently making such determinations, it is necessary to establish the panel. The panel will be comprised of CMS clinical staff, supplemented with coding and claims processing experts on staff at CMS. The panel may be supplemented with outside expertise as appropriate.

The panel will consider all relevant information (including FDA ''fast-track'' approval) in making its determinations. However, we do not envision an automatic approval process under this provision.

The panel will consider applications on an ongoing, ad hoc basis. As described below, the initial data submission must be no later than early October, approximately 6 months prior to the publication of the proposed annual update rule, and a complete dataset must be submitted no later than mid-December. Similarly, initial clinical data (peer-reviewed articles, study results, etc.) to demonstrate the substantial improvement associated with the new technology must be submitted by early October. This will permit the panel to request further documentation if necessary prior to reaching a decision. It will also allow time to consider whether outside expertise is needed, and, if so, to convene appropriate experts. It is anticipated that consultations with the sponsors of technologies will be utilized as necessary.

Decisions of the panel will be published in the annual proposed rule announcing updates to the inpatient prospective payment system, along with summaries of the documentation considered. This will permit the sponsors of the technology to request a reconsideration of a negative decision, as well as allow the public to evaluate the decisions and request reconsideration.

Comment: Commenters requested we clarify how subsequent versions of an approved new technology will be treated under this provision. The commenters suggested that the special payment provision should be available to any new technology that is introduced while the first eligible version of the technology is still eligible for special payment. The commenters further suggested that if the subsequent variations of the new technology are substantially similar, they should be automatically eligible for the special

payment provision. If the subsequent versions are different or broader than the initial technology, there should be an abbreviated application process available.

Response: We agree with the commenters that subsequent new technologies that are substantially similar to a currently approved (for special payment) technology should be eligible for special payment as well. Otherwise, our payment policy would bestow an advantage to the first applicant representing a particular new technology to receive approval.

Applicants would still be required to submit data showing they would be inadequately paid and that the subsequent technology meets the criterion that it be new (case data are not currently available in the MedPAR data). Once data become available to incorporate the costs of the new technology into the DRG recalibration process, subsequent versions must demonstrate they meet the substantial improvement criterion (with the previously new technology included in the comparative baseline) in order to qualify for special treatment.

For example, Company A and Company B are simultaneously developing a new technology. Company A applies and is approved for additional payments under this provision for FY 2003. Company B then submits an application to demonstrate its product is substantially similar to Company A's product, and is approved for additional payments for FY 2004. In FY 2005, data are available on Company A's product to be used for DRG recalibration. Therefore, no additional payments are made for Company A's product during FY 2005, and, because Company B's product is substantially similar to Company A's product, no additional payments will be made for Company B's product during FY 2005. Similarly, if Company A developed a variation of the new technology in FY 2005, this variation must meet all three criteria in order to be eligible (substantial clinical improvement, inadequately paid otherwise, and data unavailable for DRG recalibration).

Presumably, a substantially similar technology would be assigned the same ICD–9–CM code as the initial new technology. Because the approval of additional new technologies would affect the budget neutrality calculations and the requirement for the public to have the opportunity to review and comment on decisions that would impact on hospital payments, we will implement subsequently approved technologies through the annual notice of proposed and final rulemaking.

Comment: One commenter requested clarification whether a new use of an existing technology would qualify as new under our criteria.

Response: If the new use of the existing technology was for treating patients not expected to be assigned to the same DRG as the patients receiving the existing technology, it may be considered for approval, but it must also meet the substantial improvement and inadequacy of payment criteria in order to qualify for special payment.

Comment: One commenter requested that, when a procedure is approved as a new technology under the proposed criteria outlined in section IV.F. of the May 4, 2001 proposed rule (66 FR 22693), it automatically be issued a new ICD–9–CM code without the requestor having to contact the ICD–9–CM Coordination and Maintenance Committee.

Response: Before any procedure can be uniquely classified either within the regular DRGs or under the new technology process, it first must be identified. A procedure is identified through an ICD–9–CM code. This code may be a general code, such as for a bronchial dilation. It also may be more precise, such as for the implantation of an external, pulsatile heart-assist system. Participants at the public meetings of the ICD–9–CM Coordination and Maintenance Committee carefully evaluate the need for a new, unique ICD–9–CM code. They consider factors such as: whether or not there is an existing code that adequately identifies the procedure; whether the procedure is so unique that it warrants a unique code; whether there is room within ICD–9–CM for a new code; whether the structure of ICD–9–CM allows for the capture of the needed data; and whether documentation in the medical record will allow for the identification of the procedure to the extent specified by the proposed code.

These are very different considerations than those suggested by the criteria to qualify for special payment under this provision. Therefore, it would not be appropriate to allow technologies to bypass the Committee review process.

B. Determining Adequacy of Current Payments for New Services and Technology

Because the inpatient hospital prospective payment system includes costs associated with all aspects of a patient's stay in the hospital, it is not enough to simply identify a technology as ''new'' and pay an additional amount. A single DRG may encompass many different treatment approaches for a particular illness, with an array of costs associated with those approaches. Clinicians are expected to select the appropriate approach based on the needs of the patient, with the payments averaging out over time to approximate the level of resources needed to treat the average patient in the DRG.

Section 1886(d)(5)(K)(ii) of the Act, as added by section 533(b) of Public Law 106–554, requires that the Secretary make a determination whether the payment otherwise applicable under the existing DRG is inadequate compared to the estimated costs incurred with respect to new technology (as defined earlier in this final rule). We believe that, in order to evaluate whether the DRG payment inadequately reflects the costs of new technology, we must be able to assess the costs of cases involving the new technology against other cases in the DRG. In other words, the criteria for identifying new technology that will receive special payment treatment should reflect whether the new technology is so expensive that hospitals are unlikely to offset the higher costs with other less costly cases within the DRG. In the May 4 proposed rule, we proposed that this threshold be set at one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs) (proposed § 412.87(b)(3)). (Standardization adjusts the actual charges of a case by the payment factors such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.)

We proposed to make this comparison preferably using Medicare cases identifiable in our MedPAR database, although data from a clinical trial (including FDA clinical trials) where no bills were submitted for payment may be considered. To the extent possible, CMS proposed to rely on existing information in making these determinations. In most instances, the information would include the Medicare provider number of the hospital where each case was treated, the beneficiary identification numbers of the Medicare patients, the dates of admission and discharge, the charges associated with each case, and all relevant ICD–9–CM codes associated with each case (individual patient information is needed to permit matching of the hospital data with the Medicare payment file on the patient). We proposed to assess the charges of identified cases involving the new

technology, accounting for the additional costs of the new technology that might not be included in the charges if the new technology is being provided by the manufacturer as part of a clinical trial. If the costs of the new technology are not included in the total charges, we proposed to require the requestor to submit adequate documentation upon which to formulate an estimate of the likely costs to hospitals of the new technology.

We proposed that a significant sample of the data must be submitted no later than early October, approximately 6 months prior to the publication of the proposed rule. Subsequently, a complete database must be submitted no later than mid-December. This proposed timetable was necessary to allow CMS adequate time to assess and verify the data, as well as to work with the submitters to deal with any unique situations with respect to data availability. It was also necessary to allow us to accurately incorporate the data into the annual proposed rule, which we begin preparing in January. We solicited public comments on this process.

To illustrate the proposed use of the standard deviation thresholds, the proposed rule considered DRG 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures Without CC). The average standardized charge of cases assigned to this DRG based on discharges during FY 2000 was $13,212, and the standard deviation was $8,978. Therefore, under our proposal, if a requestor were to seek assignment of a new technology that would otherwise be assigned to DRG 8 to a different DRG, the requestor would be expected to provide data indicating that the average standardized charge of cases receiving this new technology will exceed $22,190. We proposed that these data must be of a sufficient sample size to demonstrate a significant likelihood that the true mean across all cases likely to receive the new technology will exceed the mean for the cases in DRG 8 by one standard deviation.

We explained in the proposed rule that using standard deviation as the threshold takes into account the distribution of charges associated with different treatment modalities around the mean charge for a particular DRG, and the extent to which lower cost cases in the DRG should be expected to offset higher cost cases. Using this method, new technology in a DRG with very little variation in charges would be more likely to meet the criteria. This would be appropriate because there are fewer opportunities within such a DRG to recover the costs of very high cost cases from excess payments for very low cost cases.

In the proposed rule, we noted that, we will continue to evaluate the appropriateness of all DRG assignments. This applies not only to new technology but existing technologies as well.

Comment: Some commenters disagreed with our proposed timetable for submitting data. One commenter recommended that, if MedPAR data are available for review, the timeline for applying for consideration for this special provision should be February 1, for inclusion in the proposed rule scheduled to be published April 1 each year. If only manufacturer (non-MedPAR) data are available, the commenter recommended a deadline of December 1 for submitting data for consideration. Another commenter recommend a two-step process for submitting data, where CMS would accept the manufacturer's ''good faith estimate'' of the hospitals' acquisition costs, then validate that initial estimate based upon actual claims experience.

Response: The proposed timetable originated from the one established in the July 30, 1999 final rule (64 FR 41500). We have attempted to balance the mandate to expedite incorporation of new technology into the clinical coding system for the hospital inpatient prospective payment system with the integrity and incentives of the inpatient hospital prospective payment system. In particular, because the payments under this provision are to be budget neutral, meaning overall payments are reduced to pay for higher payments for new technology cases, it is imperative to provide adequate opportunity to validate the data submitted. If we did not validate the data, then technologies that do not warrant special payment might qualify, which means other payments might be reduced more than is appropriate under the budget neutrality adjustment.

The December 1 deadline for submitting data not currently in the MedPAR database would not allow sufficient time to process, verify, and analyze the data prior to reaching a decision by mid-January for inclusion in the proposed rule, particularly if there is a large volume of requests submitted.

In particular, because these data are not currently in the MedPAR database, it will be necessary to independently verify the data submitted, especially the costs of the technology and the DRGs where the new technology will likely be assigned.

Although the availability of data in the MedPAR database will facilitate our analyses, a February 1 deadline would be unworkable due to the lead time needed to prepare the proposed rule (DRG reclassification decisions must be completely programmed during February to complete the calculation of the proposed standardized amounts). In addition, it is unclear what data will be available in the MedPAR database. New technology under this provision is defined by the fact that data are otherwise not available to reflect the costs of the new technology in the DRG weights through recalibration. Therefore, even if some MedPAR data were available, it is presumed additional data not available in MedPAR on the costs of the new technology will be needed in all instances.

For these reasons, we believe the timetable we set forth in the proposed rule is appropriate, and we are implementing it effective for applications to be eligible for special new technology payments during FY 2003.

With regard to the two-step process suggested by the commenter, our process does accommodate the fact that actual hospital acquisition costs may not be available at the time a request is being considered. However, we require manufacturers to provide sufficient information to allow their pricing estimate to be substantiated at the time the request is being considered.

Comment: Several commenters suggested we delete the proposed requirement that a ''significant sample'' of the data be submitted no later than early October. The commenters suggested that instead we should rely on data that can be reasonably provided by the manufacturer at the time of introduction of the new technology. Furthermore, the commenters believed that any economic data required should be reasonably derived from the clinical trials conducted in conjunction with submissions to FDA for marketing approval or for an investigational device exemption. These data may include economic models that reflect manufacturer list price and other variables, as well as published data to estimate likely volume of use in Medicare patients.

Another commenter requested that we clarify that, where the charges of a new technology are not included in the charges of trial participants because the technology is provided at no cost, we will adjust the standardized charges of cases involving the new technology to reflect that fact.

Response: We agree with the commenters' characterization of the types of data that are likely to be available to demonstrate a technology would be inadequately paid. As stated

in the proposed rule and above, the timetable we established is designed to allow adequate time to assess and verify the data, as well as to work with the submitters to deal with any unique situations with respect to data availability.

Commenters may have misunderstood our reference to a ''significant sample'' of data by early October. Apart from any statistical implications of that term, we intended to convey that requestors would need to submit a sample of sufficient size to enable us to undertake an initial validation and analysis of the data. Any problems we encountered in our review of this sample of data could then potentially be addressed prior to the December deadline to submit all of the data for analysis.

Finally, in cases where charges related to a new technology are not reflected in the total billed charges for a case, we intend to rely on verifiable pricing information supplied by the manufacturer. The estimated charges of the new technology will be added to the standardized charges for determining whether the average standardized charges of a new technology meets the one standard deviation threshold.

Comment: Several commenters expressed concern that our proposed requirement that the data submitted include Medicare beneficiary patient identifiers would lead to burdensome compliance issues with respect to patient confidentiality.

Response: We appreciate the concern that our data submission requirement not place requesters in the position of potential patient privacy violations. These concerns are significant because the final rules on privacy of individually identifiable health data became effective on April 14, 2001. Health plans, including Medicare, and providers that conduct certain transactions electronically, including the hospitals that will receive payment under this final rule, will be required to come into compliance with the final privacy rules no later than April 14, 2003. The privacy rules, however, permit providers to share with health plans information needed to ensure correct payment if they have obtained consent from the patient to use that patient's data for treatment, payment, or health care operations. (See 45 CFR 164.502 and 164.506.) Since the information to be provided here is needed to ensure correct payment, no additional consents will be required. However, we will continue to evaluate the need for this information as we acquire more experience analyzing requests.

Comment: Many commenters objected to using a threshold of one standard deviation above the mean charges of other cases in the DRG for determining that a new technology would be inadequately paid. Commenters stated that, using this threshold, virtually no new technology in recent years would qualify for the special payment provision.

To illustrate the impact of the standard deviation threshold, commenters included analysis of the standard deviation for each DRG in MDC 5 (Diseases and Disorders of the Circulatory System) as a percentage of the average charges for the DRG. Across all DRGs in MDC 5, the analysis found that the standard deviation was 69 percent of the average DRG charges. Some commenters suggested alternative criteria, such as the lower of 120 percent of the base DRG payment amount, or $2,500 in average increased costs.

One commenter suggested that high-cost outlier cases should be removed from the calculation of the mean and standard deviation because these cases have a disproportionate effect on those statistics. Alternatively, the commenter suggested the threshold should be set based on the distribution of the charges using a logarithmic transformation of the arithmetic charge values. The commenter believed this would produce a more normal distribution and result in mean and standard deviation values that are less effected by outliers.

On the other hand, several commenters believed that the standard deviation threshold was appropriate. MedPAC stated that this approach maintains the case-based payment inherent in the system, and appropriately recognizes the variability in costs per case. Hospital associations also generally approved of the criteria, although at least one expressed reservations that this may result in a threshold that is too high for some DRGs. Another national hospital association, however, expressed concern that the threshold may be too low for some DRGs. This commenter suggested the threshold be set at the greater of one standard deviation or $10,000.

Response: The suggestions from the commenters reflect the divergent opinions within the healthcare community about how far this policy should go to provide special payment for new technologies. We do not believe a set minimum dollar threshold, such as $2,500 is appropriate. For many DRGs this would represent a relatively small percentage of the costs of a case. Similar to MedPAC, we believe it is important to establish thresholds that recognize the variability in costs per case within DRGs and maintain the fundamental financial incentives of the prospective payment system as much as possible. We continue to believe a threshold based on the standard deviation is appropriate for that purpose.

We did explore whether a logarithmic specification to estimate the standard deviation would be a more appropriate method in light of the concern expressed by the commenters that our proposed threshold was unduly influenced by outlier cases. We first converted the charges of all cases in each DRG to their logarithmic values, and then calculated the mean and standard deviations of those logarithmic values. Next, we added together the mean and standard deviations, and then transformed that number back to charges.

Using this methodology, the average standard deviation as a percentage of the mean charges for the DRG declines from 75 percent using the proposed methodology to 50 percent using the logarithmic transformation. The average amount by which a new technology would have to exceed the DRG charges declines as well, from $11,794 in the proposed rule, to $7,799.

We believe the standard deviation based on a logarithmic transformation of the charges is an appropriate methodology to use to establish the threshold. Charge data for most DRGs tend to be skewed toward high cost cases, and a few extremely costly cases can have a disproportionate effect on the calculation of the standard deviation. Therefore, in order to qualify for the special payment provision, a new technology must result in average charges above the DRG mean charges plus one standard deviation of charges based on the logarithmic distribution.

Comment: Several commenters pointed out that the proposed language of § 412.87(b)(3) indicated we would compare the costs of the cases involving a new medical service or technology with the average charges for all cases in the DRG. Because hospital charges are much greater than costs, this criterion further disadvantages new technologies.

Response: We agree that it would be inappropriate to require new technologies to exhibit costs in excess of one standard deviation of average charges. In this final rule, we are revising the proposed language of § 412.87(b)(3) to refer to the charges of cases involving new technologies rather than costs.

Comment: Some commenters objected to our proposal to use the case-weighted average standard deviation of all relevant DRGs for a particular new technology, rather than determining

eligibility separately for each DRG involved. The commenters believed it would be more appropriate to apply thresholds separately.

Another commenter supported our proposed approach. Several commenters requested clarification of how we would calculate the standard deviation when a new technology involves more than one DRG.

Response: We believe a single threshold should apply to each new technology as proposed. We would expect hospitals will evaluate whether to adopt a new technology on the basis of all cases where it is applicable, rather than assessing the technology on a DRG-by-DRG basis. As described above, a fundamental premise of a prospective payment system is that hospitals will receive payments in excess of costs for some cases, and vice versa. The same is likely to occur for a specific technology across several DRGs. Therefore, for purposes of determining whether the technology should qualify for special payment treatment, it is most appropriate to evaluate the adequacy of payments across all DRGs.

To clarify this calculation, we would determine a case-weighted mean standardized charge and standard deviation for all of the DRGs to which a technology is likely to be assigned (based on the number of cases estimated to be assigned to each relevant DRG). The resulting mean standardized charge and standard deviation would then be the threshold amount that the new technology would have to exceed in order to qualify. That is, in order to qualify, a new technology that would be applicable across multiple DRGs would need to demonstrate that the mean standardized charge and the standard deviation for all cases likely to receive the new technology, across all DRGs, must exceed the case-weighted mean standardized charge and standard deviation for all cases currently in the DRGs to which the new technology would be assigned.

Comment: Commenters requested that we include either in this final rule or on our Internet website a listing of qualifying thresholds for each DRG.

Response: We have included this information in Table 1 of this final rule. The data are based on the discharge data used to calculate the DRG relative weights for FY 2002, as published in the August 1, 2001 final rule (66 FR 40054).

C. Developing a Payment Mechanism

Section 1886(d)(5)(K)(v) of the Act, as added by section 533(b) of Public Law 106–554, provides flexibility to the Secretary in terms of deciding exactly how the requirement for an additional payment will be satisfied: a new-technology group, an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable. In the May 4 proposed rule, we stated that we believe the approach most consistent with the design and incentives of the inpatient hospital prospective payment system would be to assign new technology to the most appropriate DRG based on the condition of the patient as described above, and adjust payments for individual cases that involve the new technology when the costs of those cases exceed a threshold amount. That is, we proposed to pay an additional amount not for every case involving the new technology, but only where the costs of the entire case exceed the DRG payment amount. This proposal reflected our concern that the establishment of new DRGs specifically for the purpose of recognizing costly new technology could potentially disrupt the DRG classification structure. In particular, some new technologies may involve large numbers of cases across multiple DRGs. If we were to create new DRGs specifically for new technology, this could pull cases out of existing DRGs, possibly leading to distortions in the relative weights and inadequate payments for cases remaining in the existing DRGs.

In the May 4, 2001 proposed rule, we proposed that Medicare provide higher payments for cases with higher costs involving identified new technologies, while preserving some of the incentives under the average-based payments for all treatment modalities for a particular patient category. The payment mechanism we proposed would be based on the cost to hospitals for the new technology. We proposed under § 412.88 that Medicare would pay a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. This would be calculated before any outlier payments under section 1886(d)(5)(A) of the Act, if applicable. Similarly, cases involving new technology would be eligible for outlier payments, with the additional amounts paid for the new technology included in the base payment amount. Costs would be determined by applying the cost-to-charge ratio in a manner identical to that currently used for outlier payments. Under the proposal, if the costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment would be limited to the DRG payment plus 50 percent of the estimated costs of the new technology, except if the case qualified for outlier payments. (We proposed a conforming change to § 412.80 by adding a new paragraph (a)(3) to provide that outlier qualifying thresholds and payments would be in addition to standard DRG payments and additional payments for new medical services and technology (effective October 2001).)

In the proposed rule, we gave the following example: consider a new technology estimated to cost $3,000, in a DRG that pays $20,000. A hospital submits three claims for cases involving this new technology. After applying the hospital's cost-to-charge ratio, it is determined the costs of these three cases are $19,000, $22,000, and $25,000. Under the proposed approach, Medicare would pay $20,000 (the DRG payment) for the first claim. For the second claim, Medicare would pay one half of the amount by which the costs of the case exceed the DRG payment, up to the estimated cost of the new technology, or $21,000 ($20,000 plus one half of $2,000). For the third claim, Medicare would pay $21,500 ($20,000 plus one half of the total estimated costs of the new technology).

In the May 4 proposed rule we stated that we believe it is appropriate to limit the additional payment to 50 percent of the additional cost to appropriately balance the incentives. We stated that this proposed limit would provide hospitals an incentive for continued cost-effective behavior in relation to the overall costs of the case. In addition, we believe hospitals would face an incentive to balance the desirability of using the new technology versus the old; otherwise, there would be a large and perhaps inappropriate incentive to use the new technology. For example, in the late 1980s, we considered whether to establish a special payment adjustment for tissue plasminogen activator (TPA), a thrombolytic agent used in treating blockages of coronary arteries, reflecting the high costs of the drug. We did not establish such an adjustment because we believed that the updates to the standardized amounts, combined with the potential for continuing improvements in hospital productivity, would be adequate to finance appropriate care of Medicare patients. In fact, the costs of the drug were offset by shorter hospital stays and an overall reduction in costs per case. As clinical experience with TPA accumulated, furthermore, it appeared that the drug was not as widely beneficial as its original proponents expected. Establishing an add-on payment for this drug might have actually led to more extensive use of this drug for patients who would not

have benefited, and might have even been harmed, by its blood-thinning characteristics.

Comment: Several commenters representing hospital associations suggested that we prospectively adjust the DRG weights to account for the expected additional costs of new technology. They further stated that this would incorporate the additional costs into the DRG weights, rather than providing a separate add-on amount on a case-by-case basis. The commenters argued that the add-on payment methodology increases the complexity of the system.

One commenter suggested our proposed payment mechanism violates section 1886(d)(5)(K)(v) of the Act, which prohibits the Secretary from establishing a separate fee schedule for payments for new technologies under this provision. The commenter believed that the proposed methodology amounts to a fee schedule, with the vast majority of new technologies being paid at the marginal cost of such technologies.

Response: We considered all options, including the one suggested here, prior to proposing an add-on payment. However, as noted above, we believe the proposed payment mechanism appropriately balances the incentives for cost-effective behavior with the incentives created to utilize eligible new technologies due to the increased payments.

It should be noted that CMS had discretion prior to Public Law 106–554 to use data other than MedPAR as part of the recalibration process. In the July 30, 1999 **Federal Register**, we described the process whereby we would consider non-MedPAR data in the DRG reclassification and recalibration. This was in response to the Conference Report that accompanied Public Law 105–33, which stated ''in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the conferees believe that CMS should consider, to the extent feasible, reliable, validated data other than Medicare Provider Analysis and Review (MedPAR) data in annually recalibrating and reclassifying the DRGs'' (H.R. Conf. Rep. No. 105–217 at 734 (1997)).

We are concerned, however, that the approach suggested by the commenters may not adequately fulfill Congress' intent in enacting section 533 of Public Law 106–554. Specifically, Congress already recognized that the Secretary could use non-MedPAR data to adjust the DRG weights, as evidenced by the Conference Report reference just quoted. Therefore, if incorporating new technology in the DRG weights sooner would be sufficient to fulfill Congress' intent in section 533, there would have been no need to enact section 533.

We disagree with the commenter who suggested our proposed methodology equates to a fee schedule. The additional payments made under this provision recognize the additional costs incurred by hospitals above the normal DRG payment. They are not fees paid for the use of a new technology irrespective of the amount otherwise paid under the existing prospective payment system. Therefore, they are an add-on payment, consistent with the language of section 533.

Comment: Other commenters representing medical technology manufacturers recommended that, rather than our proposed add-on payment methodology, we should create a limited number of new technology DRGs. They stated that the proposed methodology is flawed because it relies on charges, and charges for medical technology typically do not receive the same mark-up as other components of care.

Response: We are concerned about creating specific new technology DRGs for two reasons. In particular, we anticipate the number of technologies eligible for special payment during any given year will be relatively few. Establishing specific new technology DRGs would result in most, if not all, of these new technology DRGs being comprised of one or two procedures, with the DRG weights based entirely on the projected average charges associated with those very limited and specific procedures. As a result, payment for the new technology could be significantly higher than the payment for predecessor technologies in existing DRGs. This approach would forfeit the incentives to balance the clinical benefits of new technology with the higher costs. In addition, section 1886(d)(5)(L)(ii)(I) of the Act prohibits establishing new technology groups based on the costs associated with a specific new medical service or technology.

We are also concerned about the potential that a future technology may be so prevalent across so many DRGs that a disproportionate number of cases would be assigned to a new technology DRG rather than existing DRGs, resulting in distortions in DRG recalibration.

Comment: We received a mixed response to our proposal to pay 50 percent of excess costs up to a limit of 50 percent of the estimated average cost of the new technology. Several commenters objected to the proposal, arguing that the methodology does not comply with the statutory requirement to pay an amount that ''adequately reflects the estimated average costs'' of new technology. Generally, these commenters recommended that the add-on payment should be 100 percent of the costs of the new technology. Other commenters, including MedPAC, supported the payment mechanism as a way of maintaining the integrity of the DRG system and maintaining an incentive for hospitals and physicians to carefully weigh the clinical benefits of new technology against their costs.

Response: For several reasons, we do not believe it would be appropriate to pay 100 percent of the costs of new technology through the add-on payment. First, as stated above, the prospective payment system is an average-based system, allowing hospitals to recover the ''excess'' costs of high cost cases through ''excess'' payments for low cost cases. In deciding which treatment is most appropriate for any particular patient, physicians are expected to balance the clinical needs of patients with the efficacy and costliness of particular treatments. Paying an add-on amount equal to 100 percent of the costs of new technology would remove consideration of the costs of new technology from treatment decisions. We agree with MedPAC that it is important to maintain some incentive to weigh the costs of new technology in making clinical decisions.

Second, we do not believe it is appropriate to pay an add-on amount equal to 100 percent of the costs of new technology because there is no similar methodology to reduce payments for cost-saving technology. For example, as new technologies permit the development of less-invasive surgical procedures, the total costs per case may begin to decline as patients recover and leave the hospital sooner. However, Medicare will continue to pay the full DRG payment for those cases, without benefit of the reduced costs being reflected in the DRG weights for 2 to 3 years (as described above).

Third, we are concerned that, because these payments are linked to charges submitted by hospitals, there is the potential that hospitals may adapt their charge structure to maximize payments for DRGs that include eligible new technologies. The higher the marginal cost factor, the greater the incentive hospitals face in this regard.

In light of these concerns, we believe that an additional payment based on a 50-percent marginal cost factor is appropriate. In addition, we note that this final rule includes a target limit on total payments under this provision (see section III.D. of this preamble for a complete discussion of this issue). If, based on our projections of special

payments for the upcoming year, we estimate that the limit established by this target would be exceeded, we would prospectively revise downward the marginal cost factor so that the target is not exceeded, in order to limit the extent of the adjustment to the standardized amounts for budget neutrality.

D. Budget Neutrality

The report language accompanying section 533 of Public Law 106–554 indicates Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we proposed to simulate projected payments under this provision for new technology during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of additional payments under this provision would then be factored into the budget neutrality factor, which is applied to the standardized amounts.

Because, under our proposal, any additional payments directed toward new technology under this provision would be offset to ensure budget neutrality, it would be important to carefully consider the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we proposed to discuss in the annual proposed and final regulations implementing changes to the inpatient hospital prospective payment system those technologies that were considered under this provision; our determination as to whether a particular new technology meets our criteria for a ''substantial improvement'' and for a new technology; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

The payments made under our proposed approach to implement this provision would be redistributed from all other payments made under the inpatient prospective payment system. Our projections of the aggregate payments for new technology would involve not only estimates of the effect of the new technology on the entire cost per case but also estimates of the volume of cases expected to involve the new technology during the upcoming year.

Comment: Two commenters representing hospitals expressed concerns regarding the amount of potential payments under this provision, and argued that the amount of the offset to the prospective payment system standardized amount should be set a prescribed limit. Specifically, the commenters were concerned that this provision would be financed by reducing payments for cases that do not involve new technology to pay for additional payments for cases that do involve new technology.

These commenters suggested that we establish a target limit on the payments for new technology under this special provision. Estimated total payments under this provision would be limited to a predetermined target percentage of total payments, thereby limiting the size of the standardized amount offset to no greater than the target limit. One commenter recommended that the limit be set at 0.5 percent of prospective payment system payments, based on the commenter's assessment of the new technology components in the hospital inpatient market basket.

Response: Because Congress intended section 533(b) to be implemented in a budget neutral manner (the Congressional Budget Office scored the budgetary impact of section 533 at zero dollars), requiring that special payments under this provision be financed by reducing payments for other cases, there is great potential for this provision to adversely impact certain hospitals. Although we believe that the criteria for qualifying new technology we proposed would appropriately limit the new technologies eligible for special payments to those with exceptionally high costs relative to their anticipated DRG payment, we are concerned that this provision should not result in inappropriately large redistributions of payments from hospitals that do not employ new technology to those that do. Therefore, after careful consideration of the comments received on this provision, we are establishing a target limit on the percentage of total payments under this provision.

The report language accompanying section 533 of Public Law 106–544 states that ''[t]he total amount of projected additional payments under the mechanism would be limited to an amount not greater that the Secretary's annual estimation of the costs attributable to the introduction of new technology in the hospital sector as a whole (as estimated for purposes of the annual hospital update calculation.'' (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000).) Although the Secretary has not historically prepared such an estimate, MedPAC has historically prepared such an estimate.

As part of its annual recommendation to Congress on the update to the standardized amounts, over the past several years, MedPAC has recommended an allowance for scientific and technological advances of 0.5 and 1.0 percent (June 2000 Report to Congress, page 126; and March 2001 Report to Congress, page 76). To appropriately balance Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we are setting the target limit for special payments for new technology under the provisions of section 533(b) of Public Law 106–554 at 1.0 percent of total operating prospective payments.

The target limit will be enforced based on an estimate of the total amount of payments projected to be made under this provision during the upcoming fiscal year, compared with total operating prospective payment system payments projected to be made during the same period (including adjustments for indirect medical education, disproportionate share of low-income patients, and outlier cases). Should the projected amount of new technology payments exceed the 1.0 percent target limit, we would make a prospective adjustment to lower the marginal payments for new technology cases (below the 50-percent level) so that the target is not exceeded.

We considered alternative approaches to enforcing the target limit. For example, one could establish a priority ranking of the approved technologies, and work down the list paying for as many new technologies as possible until the limit is reached. Such a ranking could be based on the clinical merits of the technology, or the cost implications of the technology. However, we were concerned that such an approach would exclude some otherwise approved technologies from receiving extra payments.

Another approach, the one we have selected, is to reduce the level of payments for approved technologies across the board, to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments,

albeit at a reduced amount. Because, by definition, payments made under this provision would need to be at relatively high levels in order for the limit to come into play, and because new technology tends to be concentrated in particular categories of hospitals (for example, academic medical centers), we believe this is the most appropriate mechanism to enforce the target limit because substantial payment redistributions will have already likely occurred to these hospitals by the time the limit is reached. Although the marginal payment rate for individual technologies will be reduced, this should be offset by large overall payments for new technologies under this provision.

V. Provisions of the Final Rule

We are adopting the provisions of the May 4, 2001 proposed rule as final with the modifications that are discussed throughout this preamble. Specifically, this final rule specifies that a target for new technology payments under section 1886(d)(5)(K) of the Act will be set at 1.0 percent of total operating payments. Cases in which new technologies are used will qualify for payment under the new technology provision if their charges exceed one standard deviation from the mean charge (based on a logarithmic distribution) for all cases in that DRG. Payment will be limited to 50 percent of the amount by which the cost of the case exceeds the DRG payment for the case, up to 50 percent of the cost of the new technology. Should projected payments for the technology exceed the target amount in a given year, the marginal payment factor will be reduced prospectively from 50 percent as necessary to meet the target. This provision must be implemented in a budget neutral manner.

VI. Effective Date of the Final Rule

This final rule has been determined not to be a major rule as defined in Title 5, United State Code, section 804(2); that is, due to the budget neutrality aspect of the implemented provisions of section 533 of Public Law 106–554, the anticipated annual effect on the economy will not exceed $100 million or more. Therefore, 5 U.S.C. 801, as added by section 251 of Public Law 104–121, which provides that a major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to Congress or (2) the date the rule is published in the **Federal Register**, does not apply.

VII. Regulatory Impact Analysis

A. General

We have examined the impacts of this rule as required by Executive Order 12866. We have examined the impacts of this rule under the criteria of the Regulatory Flexibility Act (RFA) Public Law 96–354, section 1102(b) of the Act, and the Unfunded Mandate Reform Act of 1995 (UMRA) Public Law 104–4. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have determined that this final rule is not a major rule within the meaning of Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. Based on 1997 Census Bureau data, there are 4,700 general short-term acute care hospitals (tax exempt; government or nonprofit). Of the 792 proprietary hospitals, 658 are proprietary hospitals with greater than $10 million in annual receipts. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

Because we are not making payments under this provision for FY 2002, there are no estimated impacts. Future impacts of this provision on hospitals, which may include small entities and would not include unfunded mandates, will be discussed in the annual proposed and final rules implementing the updates and other changes to the inpatient prospective payment system.

B. Anticipated Effects

As noted above, there is no impact on payments to hospitals during FY 2002. Future impacts of this provision will be included as part of the annual proposed and final rules updating the acute care hospital inpatient prospective payment system.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that the final rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

D. Unfunded Mandate

Section 202 of the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any final rule that has been preceded by a final rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule would not mandate any requirements for State, local, or tribal governments.

E. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VIII. Information Collection Requirements

This document does not contain any new information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) as provided for under the Paperwork Reduction Act of 1995. In particular, the requirements referenced in these

regulations are conducted on an individual case-by-case basis, and, therefore, are exempt for the PRA, as stipulated under 5 CFR 1320.3(h)(6).

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]

DRG	Cases	Mean	Standard deviation
1	33,680	$34,221	$17,102
2	6,750	$35,700	$17,893
3	2	$114,502	$11,624
4	6,003	$25,072	$13,170
5	92,462	$14,018	$6,792
6	364	$7,554	$3,946
7	12,412	$28,146	$14,441
8	4,137	$14,771	$8,602
9	1,600	$13,968	$7,449
10	17,473	$13,211	$6,878
11	3,108	$8,957	$4,907
12	46,381	$9,146	$4,608
13	6,376	$8,376	$4,319
14	317,412	$12,074	$6,357
15	144,440	$7,682	$3,797
16	11,084	$12,117	$5,995
17	3,496	$7,027	$3,563
18	25,812	$10,098	$5,247
19	8,590	$7,117	$3,829
20	5,603	$29,649	$16,261
21	1,305	$15,564	$8,129
22	2,527	$10,617	$5,666
23	9,396	$8,291	$4,353
24	52,442	$10,390	$5,414
25	25,247	$6,251	$3,342
26	31	$6,266	$3,909
27	3,425	$13,687	$7,317
28	11,272	$14,148	$7,368
29	4,469	$7,332	$3,923
31	3,467	$9,138	$4,690
32	1,729	$5,439	$2,885
34	20,124	$10,318	$5,334
35	5,686	$6,178	$3,226
36	3,154	$6,906	$3,026
37	1,441	$11,546	$5,753
38	101	$5,070	$3,040
39	906	$6,068	$3,462
40	1,524	$8,638	$4,331
42	2,199	$6,530	$3,535
43	85	$4,899	$2,913
44	1,230	$6,604	$3,577
45	2,418	$7,040	$3,578
46	3,036	$8,286	$4,388
47	1,278	$5,328	$3,073
49	2,223	$18,135	$8,896
50	2,461	$8,531	$4,134
51	201	$8,198	$4,422
52	217	$7,601	$3,828
53	2,459	$12,031	$6,317
54	2	$6,447	$1,733
55	1,491	$8,455	$4,508
56	494	$8,644	$4,304
57	703	$10,954	$6,215
59	105	$7,209	$3,911
60	2	$7,221	$2,545
61	229	$13,913	$6,554
62	3	$4,633	$2,084
63	2,989	$14,388	$7,788
64	3,021	$12,715	$6,891
65	34,317	$5,607	$2,930
66	6,940	$5,657	$3,089
67	494	$8,111	$4,574
68	16,632	$6,949	$3,454
69	5,406	$5,236	$2,545

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
70	24	$4,884	$3,203
71	82	$7,197	$3,640
72	877	$6,982	$3,692
73	6,591	$8,215	$4,366
75	38,768	$33,224	$15,468
76	38,787	$30,628	$14,878
77	2,333	$12,849	$6,282
78	31,837	$14,053	$6,514
79	169,072	$18,018	$9,147
80	8,971	$9,880	$4,948
81	4	$25,053	$14,517
82	61,618	$15,155	$8,215
83	6,419	$10,237	$5,258
84	1,500	$5,708	$2,978
85	20,492	$13,187	$6,844
86	2,109	$7,046	$3,797
87	59,825	$15,002	$7,866
88	387,633	$9,555	$4,709
89	523,306	$11,160	$5,497
90	53,588	$6,744	$3,159
91	54	$8,727	$5,111
92	13,717	$12,968	$6,607
93	1,663	$7,679	$3,878
94	11,989	$12,637	$6,571
95	1,588	$6,204	$3,082
96	61,673	$8,021	$3,937
97	31,319	$6,004	$2,955
98	18	$7,582	$4,869
99	18,898	$7,292	$3,873
100	7,580	$5,486	$2,971
101	19,910	$8,974	$4,681
102	5,122	$5,531	$2,994
103	471	$201,472	$88,012
104	19,527	$81,506	$33,051
105	25,736	$58,962	$24,215
106	3,385	$79,188	$31,820
107	87,178	$55,413	$21,398
108	5,998	$58,620	$26,620
109	59,671	$40,351	$16,091
110	52,195	$43,587	$20,444
111	8,459	$24,521	$11,025
113	42,092	$27,689	$14,908
114	8,659	$17,115	$8,391
115	14,139	$35,743	$14,537
116	90,458	$23,428	$9,246
117	3,694	$13,386	$7,342
118	7,529	$15,361	$7,697
119	1,298	$13,855	$7,253
120	37,300	$24,039	$11,815
121	161,319	$16,520	$8,201
122	78,646	$10,933	$5,624
123	40,546	$16,620	$9,332
124	131,648	$14,598	$6,634
125	79,518	$11,040	$5,161
126	5,130	$28,436	$14,368
127	675,000	$10,417	$5,270
128	9,362	$7,652	$3,640
129	4,121	$10,564	$6,345
130	85,502	$9,755	$4,906
131	28,033	$6,094	$2,922
132	146,801	$6,749	$3,415
133	8,243	$5,761	$3,153
134	35,952	$6,081	$3,270
135	7,207	$9,244	$4,732
136	1,214	$5,991	$3,354
138	193,004	$8,485	$4,419
139	82,257	$5,256	$2,783
140	69,373	$5,641	$2,826
141	89,931	$7,531	$3,850
142	45,586	$5,698	$2,972

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
143	203,055	$5,496	$2,840
144	81,220	$12,430	$6,670
145	7,183	$6,234	$3,543
146	10,602	$28,843	$13,084
147	2,604	$17,162	$7,124
148	128,536	$36,602	$17,385
149	18,314	$15,988	$6,363
150	19,681	$30,856	$14,557
151	4,781	$14,262	$6,152
152	4,345	$20,114	$9,492
153	2,070	$12,419	$5,334
154	28,558	$45,582	$22,620
155	6,534	$13,951	$6,030
156	4	$24,515	$15,028
157	7,848	$12,849	$6,386
158	4,593	$6,554	$3,240
159	16,163	$13,919	$6,659
160	11,549	$8,172	$3,745
161	11,021	$11,565	$5,625
162	7,131	$6,561	$3,189
163	5	$9,247	$5,009
164	4,797	$25,031	$11,606
165	2,053	$13,954	$5,974
166	3,503	$15,270	$6,996
167	3,248	$9,334	$3,949
168	1,318	$13,342	$6,733
169	830	$7,320	$3,923
170	10,920	$31,661	$15,545
171	1,274	$12,356	$5,789
172	30,262	$14,527	$7,677
173	2,666	$7,411	$4,273
174	238,934	$10,265	$5,186
175	32,223	$5,742	$2,920
176	14,986	$11,102	$5,506
177	9,143	$9,368	$4,574
178	3,584	$6,861	$3,386
179	12,227	$11,171	$5,759
180	85,143	$9,809	$5,057
181	26,209	$5,548	$2,829
182	242,227	$8,187	$4,273
183	83,676	$5,926	$3,122
184	79	$4,419	$2,409
185	4,742	$9,056	$4,830
186	3	$18,405	$20,674
187	641	$8,336	$4,371
188	75,191	$11,554	$6,075
189	11,923	$6,099	$3,389
190	49	$12,761	$5,926
191	8,818	$47,924	$23,462
192	1,088	$19,337	$9,024
193	5,231	$36,682	$17,597
194	713	$18,351	$8,617
195	4,292	$31,452	$13,969
196	1,157	$17,300	$7,001
197	18,613	$26,434	$12,496
198	5,707	$12,973	$5,941
199	1,699	$26,123	$13,033
200	1,058	$33,952	$16,409
201	1,424	$40,293	$19,691
202	25,853	$13,752	$7,269
203	28,853	$14,338	$7,733
204	56,928	$12,186	$6,210
205	22,786	$12,582	$6,592
206	1,934	$7,756	$4,175
207	30,650	$11,634	$6,092
208	10,017	$6,824	$3,696
209	339,625	$20,928	$7,567
210	119,568	$17,986	$7,417
211	31,401	$13,043	$4,799
212	6	$57,573	$33,539

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
213	9,090	$19,794	$9,448
216	5,917	$24,182	$11,536
217	16,277	$33,068	$16,354
218	21,104	$15,896	$7,086
219	19,357	$10,596	$4,412
220	6	$13,926	$6,350
223	13,119	$10,043	$4,772
224	10,983	$8,270	$3,609
225	5,688	$11,467	$5,400
226	5,114	$16,123	$7,698
227	4,647	$8,329	$3,762
228	2,319	$11,244	$5,538
229	1,089	$7,551	$3,649
230	2,346	$13,595	$6,666
231	11,253	$14,623	$7,174
232	797	$9,873	$4,737
233	5,030	$21,696	$10,843
234	3,144	$12,956	$7,125
235	4,996	$7,557	$3,909
236	38,004	$7,028	$3,697
237	1,675	$5,509	$2,682
238	7,875	$14,517	$7,359
239	48,837	$10,383	$5,292
240	11,259	$13,777	$7,033
241	3,157	$6,653	$3,599
242	2,429	$11,575	$6,019
243	86,835	$7,582	$3,847
244	12,079	$7,371	$3,781
245	5,101	$4,922	$2,658
246	1,377	$5,950	$3,193
247	16,745	$5,841	$3,056
248	10,464	$8,369	$4,331
249	11,271	$6,910	$3,691
250	3,438	$7,061	$3,603
251	2,395	$4,839	$2,541
253	19,553	$7,575	$3,837
254	10,395	$4,527	$2,252
256	6,026	$8,410	$4,480
257	16,174	$9,112	$4,025
258	15,852	$7,402	$3,036
259	3,731	$8,869	$4,250
260	4,849	$6,909	$2,982
261	1,826	$9,722	$4,969
262	606	$8,773	$4,213
263	18,078	$22,473	$12,380
264	3,592	$12,368	$6,593
265	3,654	$17,016	$8,218
266	2,683	$8,939	$4,427
267	233	$10,099	$5,245
268	868	$12,455	$6,679
269	7,352	$18,569	$9,303
270	2,601	$8,408	$4,226
271	9,563	$11,955	$6,102
272	5,424	$10,430	$5,406
273	1,279	$5,949	$3,210
274	2,321	$12,576	$6,967
275	246	$7,068	$4,484
276	1,172	$7,242	$3,830
277	84,730	$8,937	$4,492
278	33,239	$5,927	$2,921
279	3	$2,550	$1,458
280	15,468	$7,111	$3,566
281	7,089	$4,838	$2,486
282	3	$2,776	$646
283	5,596	$7,337	$3,849
284	1,861	$4,435	$2,410
285	6,167	$22,178	$10,857
286	2,048	$22,448	$10,632
287	5,653	$20,363	$10,040
288	2,609	$21,408	$9,984

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
289	4,711	$9,475	$4,696
290	8,639	$8,890	$4,252
291	64	$6,421	$2,912
292	4,632	$28,760	$14,261
293	619	$13,457	$6,625
294	87,396	$7,796	$4,126
295	3,263	$7,665	$4,171
296	233,776	$8,887	$4,580
297	43,365	$5,313	$2,709
298	86	$4,227	$2,343
299	1,173	$9,354	$5,053
300	15,908	$11,597	$6,055
301	3,186	$6,404	$3,554
302	7,642	$33,433	$15,262
303	19,313	$25,451	$11,944
304	11,690	$25,200	$12,299
305	2,962	$12,174	$5,779
306	7,274	$13,464	$6,515
307	2,065	$6,404	$2,638
308	7,413	$17,032	$8,420
309	4,070	$9,562	$4,995
310	23,711	$11,599	$5,752
311	7,918	$6,344	$3,030
312	1,479	$10,838	$5,460
313	586	$6,918	$3,749
315	29,885	$21,700	$10,594
316	104,168	$14,316	$7,562
317	1,504	$6,355	$4,181
318	5,549	$12,235	$6,592
319	422	$6,344	$4,153
320	185,584	$8,903	$4,369
321	30,258	$5,887	$2,803
322	61	$5,610	$2,749
323	17,186	$8,429	$4,735
324	7,460	$4,756	$2,640
325	8,134	$6,626	$3,620
326	2,666	$4,301	$2,463
327	11	$4,011	$2,006
328	658	$7,522	$4,114
329	76	$4,760	$2,733
331	45,848	$11,037	$5,883
332	4,907	$6,392	$3,626
333	280	$8,311	$4,255
334	8,579	$15,279	$6,397
335	10,649	$11,836	$4,640
336	9,465	$9,208	$4,241
337	3,012	$6,171	$2,467
338	1,216	$12,580	$6,334
339	1,337	$12,595	$6,238
341	2,704	$13,097	$7,597
342	297	$8,432	$4,109
344	3,468	$12,517	$7,111
345	408	$12,158	$5,737
346	4,425	$10,873	$5,923
347	365	$6,111	$4,094
350	6,229	$7,381	$3,762
352	749	$6,828	$3,920
353	2,511	$18,468	$8,772
354	7,480	$15,397	$6,967
355	5,456	$9,559	$3,707
356	24,916	$7,864	$3,397
357	5,517	$25,319	$12,074
358	20,083	$12,100	$5,313
359	29,672	$8,726	$3,458
360	15,788	$8,826	$3,997
361	374	$11,030	$5,326
363	2,838	$8,262	$4,621
364	1,630	$8,158	$4,241
365	1,712	$20,830	$10,330
366	4,393	$13,272	$7,187

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
367	581	$5,804	$3,619
368	3,097	$11,964	$6,156
369	3,121	$5,836	$3,537
370	1,078	$9,721	$4,374
371	1,296	$7,095	$2,780
372	917	$5,484	$2,633
373	3,703	$3,956	$1,708
374	118	$7,009	$3,183
375	10	$6,519	$2,880
376	247	$5,310	$3,009
377	48	$17,649	$8,033
378	153	$8,352	$4,083
379	337	$4,826	$2,768
380	58	$4,498	$2,471
381	149	$6,220	$3,465
382	44	$1,723	$967
383	1,700	$4,987	$2,853
384	114	$3,658	$2,099
389	15	$22,357	$13,168
390	14	$12,153	$9,490
392	2,311	$34,949	$17,050
394	1,859	$18,654	$8,770
395	86,456	$8,418	$4,521
396	15	$11,234	$7,337
397	17,475	$13,060	$7,124
398	17,426	$13,436	$6,962
399	1,715	$7,119	$3,892
400	6,418	$30,559	$15,016
401	5,550	$30,943	$15,124
402	1,490	$12,369	$6,278
403	31,624	$19,437	$10,245
404	4,625	$9,221	$5,463
406	2,497	$30,406	$14,779
407	711	$13,029	$5,948
408	2,168	$23,053	$11,140
409	2,799	$11,704	$6,368
410	33,080	$10,149	$5,353
411	13	$4,717	$2,623
412	29	$6,510	$3,640
413	6,392	$14,553	$7,717
414	765	$7,832	$4,651
415	38,554	$40,839	$20,733
416	182,689	$16,737	$8,522
417	16	$9,109	$5,531
418	22,714	$10,799	$5,728
419	15,220	$8,970	$4,675
420	3,098	$6,391	$3,306
421	11,387	$6,726	$3,463
422	79	$4,491	$2,525
423	7,417	$18,731	$9,501
424	1,264	$24,550	$12,072
425	15,626	$7,073	$3,762
426	4,423	$5,455	$2,947
427	1,624	$5,506	$3,008
428	831	$7,318	$3,753
429	25,769	$8,557	$4,250
430	58,439	$8,037	$4,037
431	312	$6,586	$3,306
432	465	$7,118	$3,892
433	5,404	$2,945	$1,677
439	1,331	$19,257	$8,994
440	5,095	$20,402	$9,799
441	595	$9,392	$5,040
442	15,277	$25,949	$12,950
443	3,705	$10,482	$5,464
444	5,156	$7,489	$3,871
445	2,414	$4,946	$2,580
447	5,419	$4,874	$2,761
449	27,866	$8,337	$4,444
450	6,827	$4,359	$2,287

TABLE 1.—MEAN AND STANDARD DEVIATIONS, BY DRG [1]—Continued

DRG	Cases	Mean	Standard deviation
451	3	$3,661	$1,689
452	22,558	$10,348	$5,628
453	5,047	$5,217	$3,083
454	3,908	$8,634	$4,546
455	926	$4,771	$2,719
461	3,461	$12,229	$6,684
462	12,886	$12,794	$6,412
463	21,658	$7,038	$3,634
464	6,394	$5,002	$2,798
465	154	$6,501	$3,829
466	1,460	$6,123	$3,744
467	524	$6,207	$3,956
468	56,634	$40,436	$20,195
470	91,129	$8,750	$4,248
471	11,452	$31,327	$10,631
473	7,597	$41,853	$21,410
475	106,641	$41,657	$21,697
476	4,110	$24,265	$11,524
477	24,655	$20,084	$9,803
478	106,268	$25,438	$12,600
479	24,705	$14,976	$6,929
480	536	$106,339	$47,738
481	371	$84,770	$38,759
482	5,661	$39,848	$19,532
483	41,640	$163,741	$91,302
484	310	$53,719	$25,103
485	2,865	$32,195	$15,089
486	1,849	$54,905	$28,043
487	3,333	$20,448	$10,772
488	769	$55,206	$27,898
489	13,936	$19,397	$9,910
490	5,360	$10,850	$5,902
491	12,053	$17,259	$6,454
492	2,669	$52,027	$29,545
493	54,438	$19,103	$8,585
494	29,646	$10,474	$4,767
495	152	$91,522	$43,233
496	1,462	$60,541	$27,811
497	17,089	$33,800	$15,718
498	12,653	$24,583	$11,561
499	30,042	$14,842	$6,792
500	43,667	$9,947	$4,368
501	2,165	$28,367	$13,126
502	580	$16,063	$6,974
503	5,499	$12,650	$6,099
504	112	$136,018	$72,135
505	145	$15,964	$9,765
506	914	$52,706	$27,278
507	289	$18,465	$9,271
508	654	$13,178	$6,914
509	175	$7,521	$4,121
510	1,613	$13,629	$6,439
511	598	$7,074	$3,875
512	322	$62,401	$26,643
513	111	$64,167	$22,861
514	16,717	$68,327	$25,311
515	3,705	$53,939	$21,310
516	74,959	$28,839	$11,990
517	168,815	$22,998	$10,791
518	47,230	$17,756	$8,980
519	5,385	$23,034	$10,757
520	10,402	$16,420	$7,565
521	22,607	$7,527	$4,035
522	11,542	$7,088	$3,155
523	14,748	$4,154	$2,098

[1] Cases are taken from the FY 2000 MedPAR file; DRGs are from GROUPER V.19.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 412 is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 412.2, the introductory text of paragraph (f) is republished, and a new paragraph (f)(9) is added to read as follows:

§ 412.2 Basis of payment.

* * * * *

(f) *Additional payments to hospitals.* In addition to payments based on the prospective payment system rates for inpatient operating and inpatient capital-related costs, hospitals receive payments for the following:

* * * * *

(9) Special additional payment for certain new technology as specified in §§ 412.87 and 412.88 of Subpart F.

3. The title of Subpart F is revised to read as follows:

Subpart F—Payment for Outlier Cases and Special Treatment Payment for New Technology

4. A new undesignated center heading is added after the Subpart F heading and before § 412.80; the section heading of § 412.80 is revised; and a new paragraph (a)(3) is added to read as follows:

Payment for Outlier Cases

§ 412.80 Outlier cases: General provisions.

(a) *Basic rule.*

* * * * *

(3) *Discharges occurring on or after October 1, 2001.* For discharges occurring on or after October 1, 2001, except as provided in paragraph (b) of this section concerning transfers, CMS provides for additional payment, beyond standard DRG payments and beyond additional payments for new medical services or technology specified in §§ 412.87 and 412.88, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios as described in § 412.84(h), exceed the DRG payment for the case (plus payments for indirect costs of graduate medical education (§ 412.105), payments for serving a disproportionate share of low-income patients (§ 412.106), and additional payments for new medical services or technologies) plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by CMS.

* * * * *

5. A new undesignated center heading and §§ 412.87 and 412.88 are added immediately following § 412.86, to read as follows:

Additional Special Payment for Certain New Technology

§ 412.87 Additional payment for new medical services and technologies: General provisions.

(a) *Basis.* Sections 412.87 and 412.88 implement sections 1886(d)(5)(K) and 1886(d)(5)(L) of the Act, which authorize the Secretary to establish a mechanism to recognize the costs of new medical services and technologies under the hospital inpatient prospective payment system.

(b) *Eligibility criteria.* For discharges occurring on or after October 1, 2001, CMS provides for additional payments (as specified in § 412.88) beyond the standard DRG payments and outlier payments to a hospital for discharges involving covered inpatient hospital services that are new medical services and technologies, if the following conditions are met:

(1) A new medical service or technology represents an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. CMS will determine whether a new medical service or technology meets this requirement and announce the results of its determinations in the **Federal Register** as a part of its annual updates and changes to the hospital inpatient prospective payment system.

(2) A medical service or technology may be considered new within 2 or 3 years after the point at which data begin to become available reflecting the ICD–9–CM code assigned to the new service or technology (depending on when a new code is assigned and data on the new service or technology become available for DRG recalibration). After CMS has recalibrated the DRGs, based on available data, to reflect the costs of an otherwise new medical service or technology, the medical service or technology will no longer be considered ''new'' under the criterion of this section.

(3) The DRG prospective payment rate otherwise applicable to discharges

involving the medical service or technology is determined to be inadequate, based on application of a threshold amount to estimated charges incurred with respect to such discharges. To determine whether the payment would be adequate, CMS will determine whether the charges of the cases involving a new medical service or technology will exceed a threshold amount set at one standard deviation beyond the geometric mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (or the case-weighted average of all relevant DRGs if the new medical service or technology occurs in many different DRGs). Standardized charges reflect the actual charges of a case adjusted by the prospective payment system payment factors applicable to an individual hospital, such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.

§ 412.88 Additional payment for new medical service or technology.

(a) For discharges involving new medical services or technologies that meet the criteria specified in § 412.87, Medicare payment will be:

(1) The full DRG payment (including adjustments for indirect medical education and disproportionate share but excluding outlier payments); plus

(2) If the costs of the discharge (determined by applying cost-to-charge ratios as described in § 412.84(h)) exceed the full DRG payment, an additional amount equal to the lesser of—

(i) 50 percent of the costs of the new medical service or technology; or

(ii) 50 percent of the amount by which the costs of the case exceed the standard DRG payment.

(b) Unless a discharge case qualifies for outlier payment under § 412.84, Medicare will not pay any additional amount beyond the DRG payment plus 50 percent of the estimated costs of the new medical service or technology.

(c) If CMS estimates before the beginning of a Federal fiscal year that the additional payments under this section would exceed 1.0 percent of total operating payments under the hospital inpatient prospective payment system, the additional payment amounts under paragraph (a) of this section will be reduced prospectively to a percentage estimated to result in payments not to exceed 1.0 percent of total operating payments under the hospital inpatient prospective payment system.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: August 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 28, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–22475 Filed 9–4–01; 11:03 am]

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Federal Register

Friday,

September 7, 2001

Part IV

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule and Consumer Confidence Report Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7050–8]

RIN 2040–AD06

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule and Consumer Confidence Report Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes to make specific changes to the health effects language for di(2-ethylhexyl) adipate (DEHA) and di(2-ethylhexyl) phthalate (DEHP) in the Public Notification (PN) Rule (May 4, 2000, 65 FR 26020) and the Consumer Confidence Report (CCR) Rule (August 19, 1998, 63 FR 44511). EPA is also clarifying the proper use of the Integrated Risk Information System (IRIS) database. In addition, today's rule proposes to correct mistakes in Appendix A of the CCR Rule. These minor changes to Appendix A address errors in the list of major sources in drinking water for copper, the placement of regulatory and health effects information for the disinfection byproducts (i.e., bromate, chloramines, chlorite, chlorine, and chlorine dioxide), and reference to chloride dioxide instead of chlorine dioxide. EPA is not reopening its consideration of the health effects statements in the PN and CCR Rules for contaminants other than DEHA and DEHP.

DATES: Written comments on this proposed rule must be received by October 9, 2001.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–01–07, Water Docket (MC 4101), Rm EB 57, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW Washington, DC 20460. The record for this proposed rule is established under docket number W–01–07. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, Rm EB 57, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW, East Tower Basement, Rm EB 57, Washington DC, 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen Williams at (202)-260–2589 or e-mail: williams.kathleena@epa.gov. Contact the Safe Drinking Water Hotline (800–425–4791) for general information about these rules. Hours of operation are 9 am to 5:30 pm (ET), Monday -Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments	Publicly-owned PWSs, such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly- owned entities that deliver drinking water as an adjunct to their primary business (e.g., schools, State parks, roadside rest stops).
Industry	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (e.g., trailer parks, factories, retirement homes, day-care centers).
Federal government	Federally-owned PWSs, such as water systems on military bases.

In June 2000, the American Chemistry Council (ACC) filed a petition for review of the May 4, 2000 revised Public Notification (PN) Rule in the D.C. Circuit Court of Appeals, alleging that EPA violated Administrative Procedure Act (APA) notice and comment requirements with respect to the health effects language for the contaminants di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). ACC contended that the Agency relied solely on the Integrated Risk Information System (IRIS) database to develop health effects language for these two contaminants although other information was available. As part of a settlement agreement with ACC, EPA is proposing minor modifications for the DEHA and DEHP health effects language used in the PN and Consumer Confidence Report (CCR) Rules. EPA is also including a statement in this preamble on the proper use of IRIS.

EPA is also using today's action to propose other minor changes for Appendix A of the CCR Rule. In Appendix A ''leaching from wood preservatives'' is incorrectly listed as a major source of copper in drinking water. This rule deletes ''leaching from wood preservatives'' from the list of major sources for copper. Regulatory and health effects information for the disinfection byproducts bromate, chloramines, chlorite, chlorine, and chlorine dioxide is incorrectly placed in the volatile organic contaminants section of Appendix A. In addition, the entry for chlorine dioxide was inadvertently listed as chloride dioxide. Today's action moves entries for the disinfection byproducts from their existing locations and places them in the inorganic contaminants section of Appendix A. Misspelling of chlorine dioxide is also corrected.

I. Proposed Revisions to the Public Notification Rule

Section 1414(c) of the SDWA required EPA to revise its existing regulations governing the public notification that public water systems must provide to the persons served by the system when the system violates drinking water standards, or in certain other circumstances. This public notification is an integral part of the public health protection and consumer right-to-know provisions of the SDWA as amended in 1996. EPA's regulations set the requirements that public water systems must follow regarding the form, manner, frequency, and content of a public notice. When there is a violation, public water systems must, among other things, provide information to the public on the potential health effects of exposure to the contaminant in question. The Public Notification (PN) Rule (40 CFR part 141, subpart Q) provides specific health effects statements for each regulated contaminant that a public water system must provide in its public notice.

On May 14, 1999, EPA published proposed revisions to the PN rule for public comment. In that rulemaking EPA proposed to use the same brief health effects language for the PN Rule as EPA had recently required for the CCR Rule, issued in August, 1998. As a result, the PN proposal contained the CCR health effects language for DEHP

and DEHA. During the public comment period, the Chemical Manufacturers Association (now known as the American Chemistry Council) submitted comments questioning several aspects of the health effects language for these two contaminants, including the reference to ''general toxic effects'' for DEHA and the basis for characterizing DEHP as a human carcinogen. They submitted over 100 pages of comments on these contaminants providing support for their suggested changes to the health effects language. EPA did not change the health effects statements as a result of these comments, but responded to the comments by stating that the current health effects language for DEHA and DEHP is consistent with the most recent Agency IRIS document for those contaminants. EPA published the final public notification rule on May 4, 2000.

On June 30, 2000, the American Chemistry Council filed a petition for review of the final public notification rule in the D.C. Circuit Court of Appeals challenging the health effects language for these two contaminants. ACC specifically challenged EPA's failure to respond to their extensive comments on the health effects language and EPA's apparent reliance solely on the IRIS database.

To resolve the ACC petition, EPA reconsidered comments requesting changes to health effects language and agreed that the response to comments with respect to the issues ACC raised was inadequate. However, any contention that EPA relies solely on IRIS data for health effects language is inaccurate. EPA does not rely solely on IRIS in developing, or considering changes to, the health effects statements for the CCR and PN Rules.

EPA recognizes that IRIS is not a comprehensive toxicological database. There may be more recent relevant information available than is contained in IRIS. IRIS values are not rules adopted after notice and comment rulemaking, although recent IRIS assessments are posted on the Internet and public comments are solicited. IRIS values are not legally binding and are not entitled to conclusive weight in any rulemaking. In addition, EPA or any State agency that uses IRIS should not rely exclusively on IRIS values but should consider all credible and relevant information that is submitted in any particular rulemaking. If an outside party questions IRIS values during the course of an EPA rulemaking (such as a rule to establish health effects language for a contaminant for CCR and PN purposes), EPA considers all credible and relevant information before it in that proceeding.

EPA also believes that some minor changes to the health effects language for these two contaminants is appropriate based on the existing science (which, as noted above, includes but is not limited to the IRIS database.) The specific changes and the rationale for those changes is discussed in detail below.

A. Di(2-ethylhexyl)phthalate

Di(2-ethylhexyl)phthalate (DEHP) was regulated by EPA in 1992 as a B2 Carcinogen (probable human carcinogen) with an MCLG of zero and an MCL of 0.006 mg/L (57 FR 31776). The regulation was based on a 1987 EPA assessment of the data from a study in rats by the National Toxicology Program (NTP, 1982). Noncancer effects of concern included proliferation of peroxisomes, and enlargement of the liver, factors that appear to play a role in tumor development, and effects on reproduction and development (U.S. EPA, 1991). The Consumer Confidence Report/Public Notification language was developed to reflect the potential for these effects to occur when the drinking water exposure exceeds the MCL for a long period of time. The health effects language for DEHP given in Appendix A of the CCR Rule (40 CFR part 141, subpart O) and Appendix B of the PN Rule (40 CFR part 141, subpart Q) states:

> ''Some people who drink water containing di(2-ethylhexyl)phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.''

ACC objected to three components of the Consumer Confidence Report/Public Notification language as follows:

—ACC felt that EPA should not rely on the 1987 cancer classification for DEHP;

—ACC felt that it was very unlikely that DEHP was a cancer hazard in humans and that this should be reflected in the Consumer Confidence Report/Public Notification language; and

—ACC requested that EPA delete the reference to reproductive effects.

In the opinion of EPA, the requested modifications to the Consumer Confidence Report/ Public Notification language are not consistent with the DEHP toxicological data. DEHP does not appear to be a genotoxic carcinogen, but it has not been possible to completely define its mode of tumorigenic action at this time. The data suggest that activation of the Peroxisome Proliferator Activated Receptor, the production of hydrogen peroxide by peroxisomes, enhanced cell proliferation, and apoptosis may all play a role in tumorigenesis (ATSDR, 2000). However, unless an assessment that incorporates and links the various lines of evidence for a nonlinear mode of action can be completed, carcinogenicity remains as an endpoint of human concern. An Agency assessment is presently underway which may change the classification and quantification of the cancer endpoint, but it is premature to predict the final conclusion of that assessment.

In the time that has elapsed since EPA regulated DEHP, the link between DEHP and effects on reproduction and development has been strengthened (Hileman, 2000). Accordingly, there is no justification for removing the language about the potential for reproductive effects from the Consumer Confidence Report/Public Notification language. Reproductive effects that are associated with exposure to DEHP include abnormalities in testicular maturation in males (Arcadi et al., 1998, Dostal et al., 1988; Gray and Butterworth, 1980), teratogenic effects (Tyl et al., 1988), and effects on fertility (Lamb et al., 1987). The data from the studies by Tyl and Lamb suggest a steep dose-response curve.

On the other hand there are data that indicate that, at least for the biomarkers of liver effects including precancerous changes (i.e. induction of peroxisomal enzymes; liver enlargement), DEHP has a more pronounced effect on rodents than on primates. Accordingly, EPA feels that it is appropriate to qualify the exposures that may lead to adverse health effects from ingestion of water containing DEHP by saying that concentrations would have to be well in excess of the MCL (0.006 mg/L) and occur for a long period of time to be of concern. The testicular effects of DEHP can occur with short duration exposures, particularly if they occur in early development (Arcadi et al., 1998, Dostal et al., 1988). However, they appear to be reversible if exposure ceases before puberty (Dostal et al., 1988) and, thus, generate concern primarily when exposures occur over many years. Accordingly, EPA proposes to modify the Consumer Confidence Report/Public Notification language to state:

> ''Some people who drink water containing di(2-ethylhexyl)phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.''

—Di(2-ethylhexyl)adipate

Di(2-ethylhexyl)adipate (DEHA) was regulated by EPA in 1992 as a C

Carcinogen (possible human carcinogen) with a MCLG of 0.4 mg/L and an enforceable MCL of 0.4 mg/L (57 FR 31776). The existing health effects statement regarding di(2-ethylhexyl) adipate, found in Appendix A of the CCR Rule (40 CFR part 141, subpart O) and Appendix B of the PN Rule (40 CFR part 141, subpart Q), is as follows:

''Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.''

ACC raised concerns, and EPA has agreed, that the term ''general toxic effects'' in the existing health effect statement for di(2-ethylhexyl)adipate may be unnecessarily vague and alarming to the public. The specific toxic effects of DEHA seen in animal toxicological studies are reduction in body weight gain and increase in absolute and relative liver weights. Accordingly, EPA is today proposing to replace the reference to ''general toxic effects'' with new language that incorporates a more specific description of these ''general toxic effects,'' namely, weight loss and liver enlargement.

In addition, EPA is proposing to add the qualifier ''possible'' to the reference to ''reproductive difficulties'' in the health effects statement for DEHA in the PN and CCR Rules. The MCLG and MCL values for DEHA are derived from the Reference Dose (RfD) of 0.6 mg/kg/day.[1] This RfD is based on two studies in rats: a one-generation reproductive toxicity study which examined effects on fertility, reproductive outcome and gross and histological parameters in parents of both sexes; and a developmental study which assessed the effects of DEHA on gestating females and their developing fetuses (ICI, 1988 a and b). Both studies identified a no-observed-adverse-effect level (NOAEL) of 170 mg/kg/day. The data base for the derivation of the RfD was considered somewhat deficient because of the lack of a multi-generation reproductive study and the lack of relevant data in species other than rats. Accordingly, an uncertainty factor (UF) of 300 was applied to the NOAEL to derive the RfD of 0.6 mg/kg/day. This UF consists of the standard 100 factor for interspecies extrapolation and intraspecies variability, and an additional factor of 3 for database deficiencies.

[1] Using the RfD of 0.6 mg/kg/day and assuming 70 kg body weight, 2 liter/day drinking water consumption, a relative source contribution of 20%, and applying an additional management factor of 10 for possible carcinogenicity of DEHA, the MCLG is 0.4 mg/liter. The MCL was also established at 0.4 mg/liter.

In deriving the RfD for DEHA, it was therefore implicitly recognized that the data base for reproductive and developmental effects was not entirely satisfactory. To reflect this uncertainty in the data base, EPA believes it is appropriate to include in the new health effects statement the wording ''possible'' before ''reproductive difficulties.''

Today, EPA is proposing to modify the existing health effects statement regarding di(2-ethylhexyl)adipate in the PN and CCR Rules to state as follows:

''Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.''

EPA believes that this change is appropriate. It is critical that standard health effects language for public notification conveys to the public clear descriptions, in easy-to-understand language, of the potential adverse health effects of a drinking water contaminant when such a contaminant is found at concentrations above the Federal standard.

II. Proposed Revisions to the Consumer Confidence Report Rule

The Consumer Confidence Report (CCR) Rule (40 CFR part 141, subpart O) requires community water systems to issue an annual water quality report to their customers. The report provides a snapshot of local drinking water quality, including information on the source of the water, the contaminants found in the water, the potential health effects of any contaminants found above Federal health standards, the ways the water system protects its water supply, and how consumers can get involved in protection of source water. As part of that rule, CWSs must provide a statement concerning the health effects of contaminants when those contaminants are found at levels that violate the regulatory standard. Because the PN and CCR rules are closely related, EPA has required that systems use the same health effects language for CCR purposes as for PN purposes. For this reason, EPA is proposing to make the same changes to the CCR health effects language for DEHP and DEHA as is proposed today for the PN Rule.

EPA is also proposing to make the following minor corrections to Appendix A of the CCR Rule (40 CFR part 141, subpart O):

A. For the entry on Copper: ''Leaching from wood preservatives'' is listed as a major source of copper in drinking water. EPA mistakenly included that listing although leaching from wood preservatives is not a major source of copper in drinking water. This rule proposes to delete that part of the entry so the amended appendix lists only ''corrosion of household plumbing systems; erosion of natural deposits'' as major sources for copper in drinking water.

B. For the disinfection byproducts entries: Bromate, Chloramines, Chlorite, Chlorine, and Chlorine Dioxide. EPA mistakenly placed information for these contaminants in the volatile organic contaminants section of Appendix A instead of the inorganic contaminants section. This rule proposes to correct that mistake by placing information for these contaminants in the inorganic contaminants section of Appendix A. Also, the entry for chlorine dioxide was misspelled. This rule also proposes to correct that mistake by replacing ''chloride dioxide'' with ''chlorine dioxide'' in the appendix.

EPA does not solicit, and will not respond to, comments on the text of the health effects statements for these or any contaminants other than DEHA and DEHP.

III. Administrative 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 Office of Management and Budget (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. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. This rule makes minor changes to the Public Notification Rule and Consumer Confidence Report Rule which do not change the regulatory burden.

C. Unfunded Mandates Reform Act

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

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final Public Notification Rule (65 FR 26020, May 4, 2000) and the final Consumer Confidence Report Rule (August 19, 1998, 63 FR 44511), and does not change either the frequency of reports or the regulatory burden of public notification. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not suject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This rule makes minor changes to the Public Notification Rule and the Consumer Confidence Report Rule, and does not change the frequency of reporting or the regulatory burden. The rule imposes no additional enforceable duty on any State, local or tribal governments or the private sector.

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.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et.seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement 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 government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities for the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(30–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the Safe Drinking Water Act Amendments of 1996 for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration, finalized this definition for the final CCR regulation, and expressed its intention to use the alternative definition for all future drinking water regulations (63 FR 44511, August 19, 1998).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes minor changes to the Public Notification Rule and the Consumer Confidence Report Rule and imposes no additional enforceable duty on any State, local or tribal governments or the private sector. It does not change

either the frequency of reports or the regulatory burden of public notification.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

F. National Technology Transfer and Advancement Act

Section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

G. Executive Order 12898—Environmental Justice Strategy

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's proposed rule makes minor changes to the Consumer Confidence Report Regulation and Public Notification Regulation, and does not alter the regulatory requirements of those regulations. The Agency considered environmental justice related issues concerning the potential impacts of public notification during development of the Public Notification Regulation and Consumer Confidence Report Regulation. In the May 4, 2000, PN Rule (65 FR 2620), EPA concluded that the PN requirements would be beneficial to low-income and minority communities. In the August 19, 1998 Consumer Confidence Report Regulation (August 19, 1998, 63 FR 44511), EPA determined that provisions in that regulation would be beneficial to low-income and minority communities, particularly the provision requiring a good faith effort to reach non bill-paying customers.

H. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule proposes minor changes to the Consumer Confidence Report Regulation and Public Notification Rule. Thus, Executive Order 13132 does not apply to this rule.

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

I. 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. Today's rule makes minor changes to the Consumer Confidence Report Rule and Public Notification Rule. It imposes no additional enforceable duty on any tribal governments or the private sector, and does not change either the frequency of reports or the regulatory burden of public notification. Thus, Executive Order 13175 does not apply to this rule.

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

J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' This rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

IV. References

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U.S. EPA. 1991. Drinking Water Criteria Document for Phthalic Acid Esters (PAES). Environmental Criteria and Assessment Office. Office of Health and Environmental Assessment. Cincinnati, OH 45268. ECAO–CIN–D009. August 1988, Revised August 1991.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: August 30, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 141 is proposed to be amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart Q—[AMENDED]

2. Appendix B to Subpart Q is amended by revising entries 33. for ''Di(2-ethylhexyl) adipate'' and 34. for ''Di(2-ethylhexyl) phthalate'' to read as follows:

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant (units)	MCLG (mg/l)	MCL (mg/l)	Standard health effects language for public notification
* * *	*	*	* * *
E. Synthetic Organic Chemicals (SOCs).			
* * *	*	*	* * *
33. Di(2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
34. Di(2-ethylhexyl) phthalate	0	0.006	Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
* * *	*	*	* * *

Subpart O—[AMENDED]

3. Appendix A to Subpart O is amended:

a. under the heading ''Volatile organic contaminants'' by removing entries for: ''Bromate (ppb), ''Chloramines (ppm)'', ''Chlorite (ppm)'', ''Chlorine (ppm)'', and ''Chloride dioxide (ppm)''.

b. under the heading ''Inorganic contaminants'' by adding in alphabetical order entries for: ''Bromate (ppb), ''Chloramines (ppm)'', ''Chlorine (ppm)'', ''Chlorine dioxide (ppm)'', and ''Chlorite (ppm)''.

c. under the heading ''Inorganic contaminants'' by revising the entry for ''copper (ppm)''.

d. under the heading ''Synthetic organic contaminants including pesticides and herbicides'' by revising entries for ''Di(2-ethylhexyl) adipate (ppb)'' and ''Di(2-ethylhexyl) phthalate (ppb)''.

APPENDIX A TO SUBPART O—REGULATED CONTAMINANTS

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*		*	*	* *
Inorganic contaminants:						
*	*	*		*	*	* *
Bromate (ppb)	0.010	1000	10	0	By-product of drinking water chlorination.	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
*	*	*		*	*	* *
Chloramines (ppm)	MRDL = 4		MRDL = 4	MRDLG = 4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4		MRDL = 4	MRDL = 4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppm)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorite (ppm)	1		1	0.8	By-product of drinking water chlorination.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
*	*	*		*	*	* *
Copper (ppm)	AL=1.3		AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.
*	*	*		*	*	* *
Synthetic organic contaminants including pesticides and herbicides:						

APPENDIX A TO SUBPART O—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Di(2-ethylhexyl) adipate (ppb).	.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb).	.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
*	*	*	*	*	*	*

[FR Doc. 01–22522 Filed 9–6–01; 8:45 am]
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Federal Firefighters Retirement Age Fairness Act (Aug. 20, 2001; 115 Stat. 207)

H.R. 271/P.L. 107–28

To direct the Secretary of the Interior to convey a former Bureau of Land Management administrative site to the city of Carson City, Nevada, for use as a senior center. (Aug. 20, 2001; 115 Stat. 208)

H.R. 364/P.L. 107–29

To designate the facility of the United States Postal Service located at 5927 Southwest 70th Street in Miami, Florida, as the ''Marjory Williams Scrivens Post Office''. (Aug. 20, 2001; 115 Stat. 209)

H.R. 427/P.L. 107–30

To provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes. (Aug. 20, 2001; 115 Stat. 210)

H.R. 558/P.L. 107–31

To designate the Federal building and United States courthouse located at 504 West Hamilton Street in Allentown, Pennsylvania, as the ''Edward N. Cahn Federal Building and United States Courthouse''. (Aug. 20, 2001; 115 Stat. 213)

H.R. 821/P.L. 107–32

To designate the facility of the United States Postal Service located at 1030 South Church Street in Asheboro, North Carolina, as the ''W. Joe Trogdon Post Office Building''. (Aug. 20, 2001; 115 Stat. 214)

H.R. 988/P.L. 107–33

To designate the United States courthouse located at 40 Centre Street in New York, New York, as the ''Thurgood Marshall United States Courthouse''. (Aug. 20, 2001; 115 Stat. 215)

H.R. 1183/P.L. 107–34

To designate the facility of the United States Postal Service located at 113 South Main Street in Sylvania, Georgia, as the ''G. Elliot Hagan Post Office Building''. (Aug. 20, 2001; 115 Stat. 216)

H.R. 1753/P.L. 107–35

To designate the facility of the United States Postal Service located at 419 Rutherford Avenue, N.E., in Roanoke, Virginia, as the ''M. Caldwell Butler Post Office Building''. (Aug. 20, 2001; 115 Stat. 217)

H.R. 2043/P.L. 107–36

To designate the facility of the United States Postal Service located at 2719 South Webster Street in Kokomo, Indiana, as the ''Elwood Haynes 'Bud' Hillis Post Office Building''. (Aug. 20, 2001; 115 Stat. 218)

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